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IS "CUSTOMARY LAW" LAW?

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ABSTRACT

Normative laws govern the conduct of persons in society and both customary and enacted laws are members of this set of laws. And the question as to whether customary law may be regarded as law properly so-called appears to have been posed as a skeptics question, which thus does not seem to require a yes or no answer. What we need here is to provide reasons to justify the answer we prefer, whether as accepting the thesis or rejecting it. This paper is therefore an attempt to show that we can both see law as custom and custom as law. From the standpoint of logic seen as the language according to which things are done, we have provided both the form and the function of customary law in assuming these statuses. Our conclusion is that customary law is a species or subset of law.

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INTRODUCTION

A logical inquiry into the nature of customary law is necessary to show its importance in social control. Central to this sense of inquiry is its response to the age-old skepticism as to the possibility of any relationship between law and custom. Opposition to this skeptical view maintains that all laws are a product of custom. More so, it is observed in this 21st century that various traditions of customary law persist even in the more advanced societies of the world even as it is the case in the less developed ones. When this is viewed in the light of contemporary needs for legislation over customary practices in terms of regulating social life, then the question is asked as to whether or not customary law is really law. Incidentally to the question has come to be necessary when it can be shown that the procedures which make them possible may need to argue for their acceptability in practice. This paper intends to argue that there are both a view of law as custom and a view of custom as law, and more so that there is unity between these two perceptibly distinct contexts. The terms "law" and "custom" are actually not synonyms, and it is possible to find such expressions as "legal custom" and "customary law". Yet the two expressions are not to be seen as logical conversions. Instead they express two different aspects of social control or practice. And together, they constitute the foundations of the philosophy on the basis of which we settle the logic of customary law.

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What is Customary Law?

Let us begin the project by restating the topical question: "Is customary law" law? Infact this question sounds rather skeptical. It is therefore not just easy to give a simple answer to a question seeking to know whether customary law can be regarded as law properly so-called. The problem tends to lie in the application of the word "customary", for there appears to be a suggestion that the concept of law is incompatible with the notion of custom. But it would seem that taking such a stance can be misleading. Thus we may ask, what is law?

According to Uduigwomen (2000), there are so many phenomena that are referred to as "law". Such phenomena include physical or scientific laws, divine laws, eternal laws, universal laws, human laws (positive law) and natural laws. And a careful examination of these terminologies will reveal that some of these overlap in the way we explain them, thus controversies are possible. But as far as possible we will try to keep such controversies in check. What we call physical laws are sometimes called laws of nature, and this category of laws constitutes the realm of science. Such laws are "generalizations. They are "descriptive and not prescriptive" (Uduigwomen, 2000). Divine laws may be described as laws of God for believers, but secular thinkers would prefer the

label of ethical rules for this category of laws. Austin (1954) refers to it as positive morality. Eternal laws are ultimate principles on which rest the foundation and purpose of the world, which is to say they are concerned with the will of God in ordering the world. When we speak of universal laws, we are referring to those principles that hold or apply generally throughout the world. These principles are derived from the concept of a common universe available to all rational creatures. Human laws are rules of conduct with which men control society. They are formulations of men, and are also called positive law to distinguish them from scientific laws. A species of human law seen as a rational participation in eternal law is also called natural law. Thus natural law is used to cover a wider range of phenomena including physical laws and normative rules governing human nature. Incidentally this concept extends to the realm of laws of life or moral laws, by which is meant a system of ethical principles that govern human actions as God's agents. And it would seem from this position that there is reason for law.

What then is the reason for this thing called "law"? Does such a perspective answer the question of justification for customary law? One perspective of clarifications for this inquiry is to divide law into normative and scientific categories, with a view to showing that customary law belongs to the normative category. And in studying laws as a continuum, it would seem that the central idea in rating custom as law is that of its being regulatory and certain. Thus some thinkers argue that "law requires a certain minimum degree of regularity and certainty, for without this it would be impossible to assert that what was operating in a given territory amounted to a legal system" (Freeman, 2001). Now, to what extent then, is this way of looking at law compatible with the idea of customary law? Is custom law? Several definitions of "custom" are possible. But not all of them have the status of law. In the *Oxford Dictionary of Philosophy* Simon Blackburn clarifies the term "custom" as: A pattern or habit of action. A custom may exist without any basis for rational action, if the custom gives rise to a norm of action (9).

This way of looking at custom clearly shows that patterns of social behaviour can be judged by their rational and non rational basis. Incidentally, we may define rational action as behaviour done for reasons or purposes of the agent. Hence Njoku (2003) sees intention as a relevant disposition for action. This means that a rational action is a purposive behaviour. It is associated with the role of the mind in bringing about action, as distinguished from action brought about by human instinct. According to Njoku (2003), we can see human actions as events caused by beliefs or desires. Hence, it can be said that such activities are characterized by reflection, aim, intention, perfection, free will, and responsibility. It follows that a rational action is inextricably tied to the need for man to achieve the good life in society. Of course, Davidson (1980) identifies the reason of an action with its cause. He maintains that we can learn the reason why a man raises his arms from the event that causes the action. For him, it would seem that since all reasons are causes they require pro-attitudes. And generally, it is said that "to act intentionally is to bring about what is in one's plan of action" (Njoku 2003). Thus far, we can hope to find some rationality in custom. R. W. M. Dias (1976) is set to describe the various ways in which the term "custom" has been applied to human action. He defines "custom" as the

life ways of a people in terms of habit formed over a long period of time, and then goes on to distinguish it from "custom" as habit formed by an individual in much the same way. Thus in his *Jurisprudence*, Dias writes: customs are of slow growth, which alone indicate that their study is best pursued in a continuum. When a person has been doing a thing regularly over a substantial period of time, it is usual to say that he has grown accustomed to doing it. His habit may not concern anyone but himself, or at most only those within his immediate circle. When a large section of the populace are in the habit of doing a thing over a very much longer period, it may become necessary for courts to take notice of it. The reaction of people therefore may manifest itself in more unthinking adherence to a practice which they follow simply because it is done (246).

This theory finds in sheer imitation the drive behind the evolution of all practices from passing fashions to abiding customs. Yet it would seem that people's reaction can go further to show itself in the conviction that a practice should continue to be observed because it is approved by the people as a model of behaviour. But considering the belief that a normative "ought cannot be derived from a factual "is", how does a practice generate the belief that it ought to be followed? Of course the belief that the fact of a practice does not explain why it ought to be followed lies in connecting the ought within value judgements. It shares the view that a factual statement such as "X is taller than Y" cannot be used to explain whether X ought or not to be taller than Y. And in the case of practices the position tends to be more complex, being that the more the number of people involved in it the more the number of interlocking practices that develop among them. Incidentally it may be highly unsettling if individuals refuse to conform. However, Dias (1976) argues that people make plans on the basis of the expectation that a practice will be observed. Thus, it is believed that the more wide-spread a practice is, the greater the pressure against frustrating such hopes.

It should be noted that language is an important factor in considering the acceptability of a people's practice. Language helps in creating emotional response in people towards conduct. On the one hand, we see non-conformity as a factor which unsettles the interlocked behaviour-pattern and expectations. Invariably language comes to disapprove of these elements and associates them with such words as "wrong" "irresponsible" "bad", "unusual" and so on. On the other hand, we come to associate conformity to accepted patterns of behaviour with such words as "right", "responsible", "good", "usual". It is in this way that the inherited traditions of words combine materially to generate feelings of ought and the consequence sense of duty. Thus, we may say that "it is not the development of a practice as such but the growth of the conviction that it ought to be followed that makes it a model of behaviour" (Dias, 1976). And although many of such models spring up in society, it is not the case that all of them are laws. An example of this kind of situations is the behaviour of wearing black clothing at funerals. Though this type of practice is pervasive in our society, we do not take it to be a law. What remains to be done therefore is for us to determine when and in what circumstances an ought condition of practice can have the

label of law. Can this arise by referring to law as custom? According to Dias (1976), the term "custom" is often used in a confusing variety of ways to embrace local custom, conventional custom (or usage), general custom, and custom of the courts. Consider first what he calls local customs. Can we refer to this set of practices simply as law? By local customs is meant the customs of particular localities that are capable of being recognized as laws even in derogation of the common law. The courts hedge around their acceptance with conditions evolved by the judiciary. Its limits need to be defined in terms of both geographical space and historical time. The idea of there being a general custom has long been a common-place of English judicial pronouncements "that a custom prevailing throughout the land, if it existed before 1159, is part of the common law" (Dias, 1976). Considered in this way, it would mean that the identity between general custom and the common law is to be seen as a matter of historical development. The notion of conventional custom or "usages" shall be considered from the point of view of a dynamic society. It has been discovered that as society develops in various ways it tends to move away from the letter of the law, "by evolving practices that may influence or simply by-pass existing rules" (Dias 253-254).

It is only by incorporating custom into statute or precedent that enables it acquire the label of law. What we call custom of the courts relates to the doctrines of judicial precedent and *share decisi* (standing decisions). It proceeds by following past decisions. Also, allusions to general custom (or custom of the realm) appear on close examination to refer to custom of the courts. For instance, it is held in the case of *Beaulieu V Finglam* (1401) that a man who negligently failed to control his fire, so that it spread to his neighbours house, is answerable according to "the law and custom of the realm" (YB. 2 Hen. 4, f. 18, pl. 6). However, it may not be easy to see which of the customs really applies in the circumstance. But given the opinion that it is concerned with the award of damages, then of course it would be a clear case of custom of the courts. But if we take law to be conventional, how can we link the notion of custom to the idea of convention in order to make the latter a relevant part of law? It may be said that the notion of "convention" is used here to suggest the idea of regularity. It maintains that regularity holds as a matter of convention when it solves a problem of coordination in a group. This means that it is benefiting for each member of the group to conform to the regularity provided others do so. It is thus believed that any number of solutions to such a problem may exist. As Blackburn writes:

It is to the advantage of each of us to drive on the same side of the road as others, but indifferent whether we all drive on the right or the left. One solution or another may emerge for a variety of reasons. It is notable that on this account conventions may arise naturally, they do not have to be the result of specific agreement. This frees the notion for use in thinking about such things as the origin of language or of political society (81)" There is no doubt then that customs are a real source of law and law draws its practice from custom in the contemporary world. According to Dias (1976), customs provide materials for such other agencies as legislation and precedent that constitute modern law. However, it is debatable whether a practice is called law only when legislation or precedent stamps it as such or when a set of necessary conditions are satisfied. On the one hand, we find judges claiming that they are bound by customs, because custom save derogations from the common law which they must preserve unless compelled by law to do otherwise. On the other hand, these judges also claim that they are at liberty to throw out customs which they believe either to be unreasonable or to contravene some fundamental principles of the common law. And there appears to be some difficulty in trying to determine beforehand whether a judge will follow or reject a given custom according to whether it accords with or is contradictory to common law. For, it is possible that his decision may not after all reflect his claim.

Austin (1954) approaches this issue of seeing law as custom from an *a prioristic* point of view, in terms of his definition of law as a command of the sovereign backed up by sanctions. He maintains that custom cannot of itself be law except it is backed up by a tacit command of the sovereign or law giver. But by way of trying to distinguish realism and positivism, Dias (1976) speaks of Allen as saying that custom is law of itself, in the sense that a court will recognize and accept it as such. Moreover, it would seem that local custom is regarded as a variation of the common law, which thus has the implication that a judge will not depart from it unless it is so required by law. But against this view, it is argued by Dworkin (1977) that judges exercise substantial discretion in accepting or rejecting customs as laws. This therefore makes it difficult to believe that they are bound to accept it as such. Perhaps we can find a solution to this impasse by seeing the position as analogous to the law of contract, in which it may be said that what we regard as law "is not a particular contract but the statement of the characteristics which a contract should possess before it will be accepted" (Dias 1976). Similarly, it would seem that what we call customary law is not the custom itself but the statement of the characteristics which it must have in order to qualify as such. Be that as it may, this analogy appears to be false because the properties out of which contracts and habits are constructed cannot be so compared, namely "creativity" and "evolution".

In Simpson (1973), the attempt has been to explain the nature of common law in its relationship to custom. Although Simpson is not trying to explain the doctrine of *stare decisis*, nevertheless his concern with description of common law has led him to it. He maintains that common law existed for many centuries before the evolution of *stare decisis*. Now a question may be raised about the justification of standing decisions. For instance, how can we show the meaningfulness of the statement "it is the law in England that contracts require consideration"? Incidentally in the attempt to answer this question, positivism reduces the idea of common law to a system of rules laid down by the will of the sovereign. This conceptual framework is clearly misleading. In other words, the Autinian attempts to explain judge-made law in terms of tacit command are not helpful in settling the justification of *stare decisis.* For this reason, Simpson prefers the view that the common law system is a customary system of law. Note worthy, this customary system of laws consists of a body of observed practices and received ideas associated with a caste of lawyers. According to him, such ideas are relevant in providing guidance both in the rational determination of disputes and in advising clients. However, Freeman (2001) criticizes Simpson's explanation of common law as being partial, because it begs a further question about the nature of

custom. F. K. Von Savigny (2001) is a strong proponent of the historical school of law. In contrast to the positivist, Savigny (2001) maintains that a legal system is part of the culture of a people. It follows then, that law is not the result of an arbitrary act of a legislator but develops as a response to the impersonal powers to be found in the people's national spirit *(the volkgeist)*. This *volkgeist* is to be seen as a unique ultimate and often mystical reality. And Savigny believes it to be linked to the biological heritage of a people. He uses this theory of the *volkgeist* to reject both the French code and the subsequent move to codify German law until 1900. Thus far, Roman law was adapted to German conditions with the injection of certain local ideals. As a historian, Savigny sets himself the task of studying the course of development of Roman law from ancient time till its existing state as the foundation of the civil law of contemporary Europe. On this basis, he is led to the hypothesize that "all law originated in custom and only much later was created by juristic activity" (Freeman, 2001). He concedes the fact that in the earliest time to which authentic history extends, the law had already attained a fixed character, peculiar to its people, like their language, manners, and constitution. Savigny thus sees a nation and its state as an organism which is born, grows into maturity, and declines until it dies. Accordingly, law is a vital part of this organism. But one thing must be clearly stated. It is the skepticism about the law-custom relationship. There appears to be no agreement among jurists and anthropologists on the relationship between law and custom. What seems to us more appropriate to say in the present circumstance is as Freeman writes:

Law grows with societal complexity, with the decline in the importance of primary groups such as the family, with the breakdown of organized religion, with industrialization and bureaucratization. In many of the tribal societies studied by anthropologists custom is sufficient for the needs of that society. It is all too easy to assume that because we need legal regulation so must less happy or civilized people (914). We notice here that custom is evolutionary in nature. This view is originally credited to Savigny, and seems to provide a rational basis for historical development of law. Also of great significance in contemporary legal analysis is the work of Roger Bird, who provides a definition of custom from the legal angle in terms of its form and function. In the *Concise Law Dictionary,* Bird refers to custom as:

A rule of conduct, obligatory on those within its scope, established by long usage. A valid custom has the force of law. Custom is to society what law is to the state (Salmond). A valid custom must be of immemorial antiquity, certain and reasonable, obligatory, not repugnant to statute law, though it may derogate from the common law (107). It might then be said, that custom exists simply because a form of conduct has become accepted practice. Thus it is argued that "whether that conduct is reasonable, efficient, or even right or wrong is not at issue in custom" (Nnam, 1989). It is enough that a certain way of acting is the "usual way" of doing so. This is why some thinkers have tended to judge custom on the basis of its being irrational and unethical. A question may therefore be asked as to whether our conformity to custom should be regarded as the exercise of due care. What seems the right answer to this question is to be found in the case of *Texas V. Texas* and *P. R. Co V. Behymer* (1903), in which Justice O. W. Holmes states the obvious. According to Holmes, "what usually is done may be evidence of what ought to be done, but what ought to be done is fixed by a standard of reasonable prudence, whether it usually is complied with or not" (189 US 468, 471, ed. 905, 23 Sup. Cr. Rep. 622, 13 Am. Neg. Case 695). Holmes' view is a reflection of the American situation in which custom serves mostly for *obiter* comment. Otherwise, it may help the jury in determining what a defendant is supposed to have known about his case. The implication of this belief is that what the ordinary prudent person would do in similar circumstances is taken to be what ought to be done. Thus "while the customary way in America may preclude due care, judgement is always made on the basis of reasonable prudence" (Nnam, 1989).

Bohannan (946) presents the view that what begins as custom becomes redefined in legal institutions and is then turned upon the social conflicts which custom cannot resolve. To him, law results from double institutionalization. But he concedes that this "law-custom" relationship is inadequate in a society where there is either more than one culture (as in colonial societies) or more than one centre of power (as in international relations or stateless societies). Incidentally, Stanley Diamond has written to attack Bohannan on this way of conceiving law. According to Diamond (42), custom represents "order" while law is the antonym of order. For, he believes that law cannibalizes the very institutions it purports to reinforce. This claim is particularly exemplified by the repressive manners in which governments gain sovereignty over peoples in Africa. As a Marxist, Diamond sees the primitive society as the ideal and likens its cleavage into classes to the fall of man.

For Lon Fuller, it is possible to further our understanding of law through a study of custom. Fuller (2001) maintains that the neglect of customary law in the contemporary world has done great damage to legal thinking generally. He considers the importance of customary law in the contemporary era to be a two-fold reality. First, much of international law (perhaps the most vital part of it) is essentially customary law, upon which world peace depends. Second, much of the contemporary world is still governed internally by customary law. This is evidenced by the newly emerging nations of the world (Africa, India, and the Pacific) which now are said to be engaged in a hazardous transition from systems of customary law to systems of enhanced law. Based on these two premises, Fuller goes on to put forward a thesis of denial of "law-apart-of-custom". As he writes in his *Human Interaction and the Law*: we cannot understand "ordinary" law (that is, officially declared or enacted law) unless we first obtain an understanding of what is called customary law (936).

Based on this argument, customary law can best be described as "a language of interaction" (Fuller, 2001). And we may argue that a meaningful interaction requires a social setting in which participants fall generally within some predictable pattern. To engage in effective social behaviour, participants are made to know their expectations from the actions of others. In this way custom offers an unwritten "code" of conduct. This mitigates the significance of the view that customary law should be seen as "complementary expectation", a term that Fuller (2001) ascribes to the function of customary law as the law which develops out of human interaction. However, it is also possible that customary law in primitive societies may lay down rules that have nothing to do with human interaction.

But it would seem, as Freeman (2001) says, that to consider customary law as language of interaction is much rationalistic and attributes to customary law a functional aptness, and neatness of purposes that is far from the realities of primitive practice. R. M. Unger (1978) describes the processes which have led to changes from customary law through bureaucratic law to a legal order, and eventually to post liberal legal order. For Unger (1978), changes in the legal system of society are related to changes both in the organization of society and in the consciousness of its people. According to him, the legal order is a product of Western liberal societies. The fact is, that the State at this stage is forever caught up in the antagonism of private interests or factions and thus needs the tool of one faction or another. At the post-liberal stage of society the State takes on a welfare aspect of legality – thus giving rise to policy-oriented legal reasoning, interest in substantive justice, and general classes in legislation. As a post-liberal society moves on, its future lies in a return to customary law or tribal society, or in the re-assertion of communitarian concerns. On the one hand, it would seem that to return to customary law or tribal society requires the suppression of individual freedom because the existing order is sanctified. On the other hand, it would seen that to re-assert communitarian concerns requires subversion of inequality and confidence in collective choices and this will make possible "an ever more universal consensus about the immanent order of social life" (Unger, 1978).

The Logic of Customary Law in General

We go on in this section to say that the notions of form and function by which Bird (1983) describes custom are basic to a proper understanding of the concept of customary law. When we speak of the form of custom, we are referring to what custom looks like, how it is carried out, what it is made of, and what its dimensions are. In these respects, we can identify some basic characteristics. It may be said that custom is like a hatchet used in sheep husbandry. It does not change its form simply because it is used in America or Asia, or Africa. It is also like a tree, which grows irrespective of where it is established. However when we speak of the function of custom, we may be thinking of different cultural and social settings in which it applies and we thereby mean different things. It would seem here that the concept of function is a tricky one. But in two important senses, it has been used to mean something logical and something symbolic. James F. Downs wants to show how logic is related to custom. The central thesis of his philosophy is that everything that men do has a logical function. This is based on the popular idea that man is a creature of rational action. Thus, in his *Culture in Crisis*, Downs (1972) says:

To many, it implies that everything men do has a logical function and that if we are patient and diligent enough in trying to understand another culture, no matter how strange it seems to us, we can show how rational these other men are (98). On the one hand, this claim is in large part believed to be true. On the other hand, some investigations simply try to prove that all men are irrational, rather than say that some men are not rational. But we will agree with thinkers who maintain that "a logical action is a rational action" (Etuk, *Philosophy* 75). Basically, the concept of function tends to rest on the assumption that "even when the reasons are not clear, men in all societies do things or use things because they serve a purpose or satisfy a need" (Downs, 1972). This view is therefore both different from and better than saying that human actions are dictated by tradition or superstition, which rightly speaking is manifestly false. Incidentally just as a tree comes into being and grows in space and time till it gets out of existence, so does custom get established and grows with the life of people till it gets out of use. A symbol is a formal expression of an idea. Custom may be seen as a symbol of unity and continuity of a people. For example, in traditional Africa the head of a family can be seen as an important symbol of the family as regards economic considerations. Apart from this, it seems that a period of drawing close together represents the unity and continuity of the family group. Custom brings people together in this and similar kinds of fashion. And there is a great emotional involvement in organizing people the traditional way, which people loath to give up unless very dramatic advantages of another method can be shown. Even so, Etuk (2003) claims in his *The Possibility of African Logic* the difficulty or near impossibility of distancing the contemporary African from the symbolic aspect of his traditional past. We are hereby led through awareness of the complexity of the phenomenon of function to how important it is for anyone attempting to introduce new ideas into another culture. In such a case, the new idea should be better than the old one.

It may now be argued that, what we call "law" takes its historical origin from the traditional society, despite the skepticism that traditional societies do not have laws. And because society is organic in the sense of its being dynamic, it would seem that customary law in contemporary societies may have undergone characteristic changes in space over time. This leaves us with the idea that it is possible for there to be conflict of practices in certain countries of the world, between relativism and universalism as alternative approaches. More so, the possibility of conflict finds its impetus in the relation between cultural and temporal forces in the course of evolutionary movement of society by historical forces. Sanni (1999) traces the origin of the relationship between custom and law to the origin of the relationship between socialization and conflict in the evolutionary process of society. He maintains that the stage in life at which men lived in isolation was conflict-free. For him, the emergence of conflict is attributed to the coming together of people to form a relationship. Incidentally conflict of interests emerged from all relationships that came to formed irrespective of whether the people involved in it were husband and wife, master and servant, or family members. Such conflicts, which emanated from their natural instinct of self-preservation, required to be restrained given the necessity of preventing one person from arbitrarily asserting his power over his follow man to dominate him. So when socialization got to the level at which a number of individuals, families and groups had come to live together, "the habits of the people began to crystallize into customs and rules" (Sanni, 1999).

He goes on to say that justice required by the traditional people for breaches of rules was initially administered by self help through forcible reprisals and family feuds. For instance, one may have had to overpower a thief to recover stolen property and failure to do so left the owner of the property with no remedy. We can associate that early period of human social relationship with the reality of rule of force. So many

people suffered exploitation and deprivation, including the weak, the young, the aged and the deficient or disadvantaged members of society. But eventually people came to organize society in the attempt to balance the competing interests that flourished in it. Sanni then goes on to trace the early development of law in his *Introduction to Nigerian Legal Method*, as follows:

law consisted mainly of customary rules or practices and ethical values which were administered by the King or elders gathering at the village square to resolve disputes. Social order was thus maintained by a series of unorganized sanctions such as ostracism, ridicule, avoidance of favours, etc. In certain instances the punishment inflicted was disproportionate harm. The method of maintaining social order at that time had undergone many layers of development and reforms to become what we have today whereby law is administered by government through its agencies and officials such as the law courts, police, ministries, president, ministers, civil servants (11). The relationship between law and custom may therefore be expressed in the view thinkers who hold that "custom is a rule which in a particular district has, from long usage, obtained the force of law" (Essien, 2001). Based on this premise, we may argue that the basic principles of custom or customary law are suggested by the proposition that it is the organic, accepted and living law of the indigenous people of any society as regards their life and transactions. This means that customary law is a reflection of the culture and accepted usage of a people, more so one which imports justice to the lives of all those who are subject to it.

But one thing is certain, that customary law aspires to create in a society the kind of social order which functionalism underscores. Functionalism is a theory that is concerned with efficiency and effectiveness in the social system of society, as occasioned by the interconnectedness of unconflicting roles. Incidentally the kind of social order which functionalism approves is settled on societal values, and it would seem that men in all societies of the world are not totally opposed. Thus far, we can say that customary law may be both locally and internationally relevant. It is therefore possible to find a participation of different cultures in the central scheme of customary law throughout the world. For instance, it is possible to find the influences of Common Law, Roman Law, the *Volkgeist*, and Islamic Law in the customary law practices of many countries of the world. Of course, the acceptability of these custom ways of different cultures by other cultures may be a matter of common values.

Conclusion

Customary law practice has been with us for very long since the inception of society. Historians tell us that it is the oldest form of law, and that custom is the foundation of modern enacted law. This is because all societies in every epoch of our legal history can be identified with some form of law no matter how rudimentary the practice. In many countries of the developed world today, some of their age-old customs have become part of national legislation while some are recognized by the courts as laws and applied as such through juristic procedures which themselves assume the status of laws. In reality, the attempt to answer the question as to whether "customary law" is law properly so-called ends us in the affirmative since we can show that customary law is a species of both natural and modern law. The fact that modern legal systems are comfortable with formalized practices such as legislation, adjudication, and administration is not supposed to mean that these elements of our legal order are given in nature rather than that they are created to serve societal needs. The state of law reflects the state society in time and space. As a matter of fact, we can both see law as custom as well as see custom as law. Customary laws and customary legislations existed in ancient socient societies and they have passed on to us in the modern time with modifications via the medieval era. Apart from grafting age-old customs into modern law, we can see that our contemporary legal systems throughout the world follow customary approaches in legislative, judicial and administrative procedures. But it is doubtful whether the logic of this new dimension of legal practices would be termed more rational than the logic of the older custom ways for failing to achieve the objective of change. This is why modern law tries to shape age-old customs just as social change (new customs) tries to direct the course of modern law. It is in turn for this reason that we should not relegate the study of customs to the background. Thus the logic of law requires that the relationship between customary law and legal customs should be studied as a continuum.

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i *Beaulieu V Finglan* (1401)
ii *P. R. Co V Behymer* (1903)
iii *Texas V Texas* (1903)

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