Relics of a Retarded Ritual: Anti-obeah laws in Jamaica a reflection of Fear's Defence

*By Raymond Hussein**

The Obeah Act 1898, which is still on the books in Jamaica, constructs obeah as being myalism. But the Act does not equate practicing obeah with all the precepts of the religion of myalism; s. 2 of the Act defines those practicing obeah as those using or pretending to use occult means, supernatural powers or knowledge to do either of three things: (i) to effect a fraudulent or unlawful purpose (ii) for frightening any person and (iii) gain. Section 7 defines a practitioner of obeah or obeah man as one in possession of an instrument of obeah being an identifying mark of such status until otherwise proved by the accused. But interestingly s.5 goes a bit further by saying that anyone consulting an obeah man or practitioner of obeah to achieve an event or occurrence would be liable if the individual paid for such services. Further s. 6 goes on to allows the court if upon the basis of oath testimony to direct the police into one's home to find instruments of obeah. Section 10 seeks to hold liable those doing any of the following: composing, printing, selling, and or distributing of printed material for promotion of the obeah superstition.[1] Though the freedom of press rights is not in that nation's constitution, the restriction of s.10 infringes the core of freedom of speech, belief and religion walking hand in hand with being able to propagate one's faith, effectively violating ss. 13 and 22 (1) of the Jamaican constitution.

The Obeah Act is constitutional in letter though violating the spirit[2], as a pre-Constitution law it remains valid because of the saving law clauses of s.26 (8) and (9). Francis Alexis's paper on anti-obeah laws highlights that the problem is with where the courts have been reluctant to rule in cases such as ***Collymore and Abraham v. Attorney General***[3] and ***Director of Public***

* Nome de plume

1 The Obeah Act Cap.266 2nd June 1898 – see The Appendix

2 "Anti-obeah laws and The Constitution" Alexis, Francis. University of the West Indies: Cave Hill. December, 1973.

3 (1970) 15 W.I.R. 229 PC

Prosecution v. Nasralla [4] on existing laws for as Lord Devlin suggested the thought was existing laws already embodied the most perfect statement of fundamental rights and that no inconsistency with sections 12 to 23 was possible[5]. However it was his hope that the courts throughout the region would eventually steer towards the court's stance in Charles v Phillips and Sealey[6] and Herbert v Phillips and Sealey[7].

The constitutionality of the Act is not being argued, Francis Alexis and Herbert C. Mckenzie have done it in their papers on the topic of obeah[8]. This is really an examination of the jurisprudence behind the retention of the act and the use of state law to vilify a religious practice. Alexis admits that the contradiction could be resolved through modification clauses that are present in some constitutions where the requirement is modifications should be made to agree with the constitution or his argument being rooted in the supremacy clauses of the constitution of the various territories.

Herbert G. De Leisser writing on myalism informs us obeah is part of the religion of the Ashanti people of West Africa. They brought with them these religious practices to the Caribbean when some of their numbers were enslaved. In the religion practised on the Gold Coast it is highlighted the god Sasabonsum had no priesthood but could be invoked to give power to the instrument (which may be anything from twigs and receptacles) called a shuman in West Africa or an "instrument of obeah" in the Obeah Act. Sasabonsum was feared and the possessor of the shuman was despised in public opinion[9]. Thus even the religion itself from which it derived recognized that side of the practice was reprehensible.

Leisser writing further illuminates that the original distinction existed between the myal men and women versus the obeah man, the former being a benevolent wielder of the supernatural whilst the obeah man was

4 [1967] 2 AC 238 PC

5 Boyce & Joseph v. R [2004] UKPC 32

6 (1967) 10 WIR 423

7 (1967) 10 WIR 435

8 "The Obeah Act 1898 : an antithesis of fundamental rights in Jamaica" Herbert C. Mckenzie, University of the West Indies: Cave Hill, 1994.

9 "Development of Obeah in Jamaica"Voodoos and Obeahs: Phases of West India Witch-craft Joseph J. Williams Vail Ballou Press : Binghamton, New York, 1933. {scanned August 2001}http://www.spirituality-religion.com/books/africa/vao/vao07.shtml and http://www.spirituality-religion.com/books/africa/vao/vao00.shtml.

the malevolent. He argues it is possible the distinction disappeared because during slavery the enslaved people's religious practice was censored by the law and all religious practitioners of myalism were associated with the illegal and feared subsequently adopting the obeah label[10].

Interestingly though the advocates for the religious freedom to practice obeah have buttressed their arguments on the religious status of the practice they have not resolved the issues involved in defining the act as a religion. Alexis' paper still stands on the basis of the freedom of belief but not so much on religion where practices are concerned because the Act does not speak to believed supernatural power but actual the practice of such beliefs that are unlawful, fraudulent, and for gain. But he contests Leslie S. Thornton's and Professor Patchett's view of obeah and supports it religious status on George Eaton Simpson's work regarding the Jamaican practice[11]. There is weight to his arguments but the truth is that even if the spirit of the constitution has been violated the jurisprudence used to defend the anti-obeah laws really speaks to the individual rights being subjugated to the Volksgeist or popular collective spirit of a people.

F.K. von Savigny says a legal system is part of the people's culture. Law was a response to impersonal powers in people's national spirit. Law originated in custom and only much later became a creature of juristic activity. Reconciling his view of the *Volksgeist* or the particular distinct culture or spirit with the common guiding spirit of humanity by claiming the latter moves the former informing the creation of positive law[12] Savigny made the law a creature of its society. The retention of the anti-obeah law, if the common belief of a people informs the law, suggests that the belief is not one the people are willing to accept or recognize as a right probably out of fear. The reason anti-obeah laws can be retained is the defence it is the law of the people; such laws seem to be people's law though we will not be able to say whether it truly reflects the belief of the people or the law has created such a belief. Professor McIntosh raised this issue of the constitution being the ultimate self-defining tool in law in regards to the few in number who participated in the creation of the constitutions of the

10 Supra., http://www.spirituality-religion.com/books/africa/vao/vao07.shtml

11 "Anti-obeah laws and The Constitution" Alexis, Francis. University of the West Indies: Cave Hill. December, 1973. Pgs 2-3.

12 Lloyd's Introduction to Jurisprudence Seventh Edition, M.D.A. Freeman, Sweet & Maxwell: London, 2001. Pgs 905-907.

Caribbean, particularly in Jamaica, in such cases can the law be legitimate?[13]. If the law creates the belief then it is up to the legislatures not to shackle the current belief of the people by the past views of a few legislators. It even adds more force to the unconstitutionality of the belief of the majority using the law to suppress the belief of the minority.

Hagerstrom described legal science as requiring emancipation from mythology, theology and metaphysics. Legal philosophy for him was a sociology of law without empirical investigation, but built instead upon conceptual, historical, and psychological analysis. In the light of this philosophy the states retaining anti-obeah laws give sustenance to Hagerstrom's theory, quickening pretensions to supernatural powers[14]. The punishment of this particular brand of religion really speaks not only to the history of these respective territories but also that the fear if not coming from the legislative, the persecution of the bogeymen or "obeah man" from the minds is by the law.

The law should never be used as the inquisitor of our fears, only real threats and crimes should come before the courts. Savigny speaking of the Volksrecht or the positive law in the consciousness of a people said it was not to be the arbitrary will of particular members of a people. Caribbean law and independence already has allegations of questionable legitimacy due to the lack of popular participation in law-making. According to Savigny the law was to be a reaction to the impersonal powers in the Volksgeist, he contended that whether law be made by a prince or by a few it was not to be the popular nature but the link that the legislature had with the Volksgeist would be the source of infusion gradually during an interval of uncertain law[15]. This period is now where the move is being made by other states to repeal anti-obeah laws; this uncertainty can only be ended by the law's expression. The culture has changed but the responsiveness to the change is not there due to the saving law clauses that are kept because of policy.

S.E. Mumford notes that the courts recognize they no longer have any jurisdiction to pronounce on the truth or otherwise of any particular religious belief in tandem with the recognition of a variety of religions.

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13 Caribbean constitutional reform : rethinking the West Indian polity Simeon C.R. McIntosh, Caribbean Law Publishing Company: Kingston, 2002.

14 Lloyd's Introduction to Jurisprudence Seventh Edition, M.D.A. Freeman, Sweet & Maxwell: London, 2001. Pgs 856-7.

15 Supra, Pgs 924-5.

Detachment of legal systems from a single religious faith has created problems of defining religion with considerable advantage in pluralistic terms and non-discrimination[16]. However non-discrimination is not entirely absent in the Caribbean context.

In order to define religion according to Cumper a flexible definition is required to satisfy a broad cross section of the world's different faiths, yet still balancing it with sufficient precision for practical application in specific cases. Cumper asserts this as nearly impossible[17]. Defining religion actually has eroded freedom of religion and belief in the law of the land though the lightly enforced nature of the anti-obeah laws has created an atmosphere of religious freedom in Jamaica. But still the state has still kept on the books a restrictive interpretation of religion.

Minority faiths whose tenets have failed to correspond to all elements of an official definition of religion are at risk[18]. The European Court on Human Rights has shown an unwillingness to give a clear definition along with the International Covenant on Civil and Political Rights as by the United Nations. But more practical judges have looked to the existence of an identifiable group that see themselves as a religious organized one. Modern legal systems and orders renounce the capacity to adjudicate on statements about metaphysical reality, while it retains jurisdiction over other statements about reality. The legal system really cannot properly evaluate statements about metaphysical reality, much less the beliefs and practices unless they impact in real ways upon the society that are deemed the law's prerogative[19].

Durkeim speaking on the definition of religion defined as it a unified system of beliefs and practices relating to sacred things, set apart and forbidden, beliefs and practice which unite into one single moral community called a church. Edge suggests rejecting these elements the focus should be spirituality, the individualistic structure of international human rights guarantees, including those of religion emphasizing spirituality within

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16 "The Judicial Resolution of Disputes Involving Children and Religion" S.E. Mumford, ICLQ 117, p 131-2

17 "Freedom of Thought, Conscience, and Belief" P. Cumper in Legal Responses to religious difference Peter W. Edge

18 Ibid.

19 Legal Responses to religious difference Peter W. Edge

terminology of religion[20].

The organizational requirement is defined by purpose, not composition, its goals not necessarily having to come out of a religious context. Edge points to the practice of judges in looking for the existence of an identifiable group who see themselves as a religious one.[21] The same does not apply for obeah the way it is practised as the act of a select gifted few, the absence of a collective group precludes it from religious freedom as exercised by Rastafarians, Muslims and Hindus in the Caribbean where their religious practices are allowed to the extent of not disturbing public morality, peace, or violate the laws of the states [excluding of course those that target the religion].

Interestingly belief is not accorded the same meaning as the word denotes or connotes such as holding a position on a religious matter but rather it even goes to extent to exclude certain faith practices such as humanist and secular philosophies though the sacred nature of such beliefs are traditional in sense[22]. This really cuts through the safety net of Alexis' argument.

Edge speaking on religion acknowledged misrepresentation as a possible problem in defining religion. Speaking of the phenomenon he noted that false characterizations of the objects discussed are made as the result of applying a discipline's perspective or standards to perceived objects[23]. It is this misrepresentation offered by traditional religious groups that have shaped the view of obeah within the Caribbean. Obeah has been associated with witchcraft and devil-worship in the eyes of the former colonizers. This misrepresentation is in part reflected in Thornton's work regarding the obeah practitioners.

S. Leslie Thornton noted the ineffectiveness of the legislation against obeah highlighting then existing obeah practitioners hiding along with a widespread accompanying dread and aura of mystery. Thornton labels obeah as a craft rather than even a cult but provides little proof of obeah's dangerousness other than the supposed fear for the practice's unknown

20 Ibid.

21 Ibid

22 Ibid

23 Ibid

effects. Thornton dilutes obeah to basically an attack on the mind alleging the "craft's" only real victims he knows are those who pay for the practice to be done on their behalf.

Thornton spoke on the change before the anti-obeah laws, the difference in the appeals and success of such appeals to the High Court regarding the charge. The law effectively made a change from the position where the conviction could not be upheld for grounds of no proper charge to one where the mere satisfaction of anyone of the acts of practising or consulting being enough to obtain convictions with a large numbers of practitioners and a marginal number of their clientele.

Thornton though speaking against the practice makes a suggestion that still remains valid, the law should stop infusing the obeah practitioners with an aura of supernatural power and mystery effectively ignoring or remaining silent on issues of claim to supernatural prowess. Thornton suggests that they be dealt with and punished as any ordinary cheat or impostor who unfairly enriches himself from people's fear[24]. The law's evolution according to Savigny's theory should go to juristic activity, not to religious or metaphysical issues of deliberation.

Trinidad and Guyana have made moves to repeal the anti-obeah laws[25]. But still Jamaica retains the Act keeping the law in the shackles of what is jurisprudential retardation on paper and possibly spirit considering the enforceability at any time though Jamaica's system of prosecuting for obeah is very lapse or lenient on the matter. Nonetheless the state has an obligation to move forward with active juristic activity.

Alexis speaking on the reason for the retention of anti-obeah laws notes that the defence is strongest on grounds of public morality noting Professor Patchett's decrying of the laws as social evils which are both unchristian and immoral[26]. But that may not entirely be the side of the stance.

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24 "Obeah in Jamaica" S. Leslie Thornton

25 In Trinidad there is the Miscellaneous Laws (Spiritual Reform) Act, 2000 which gave more freedom to the Shouter Baptist and Orisa Baptist religious groups and also amends the Summary Courts Act to remove references to "obeah" and the offence of the "practice of obeah" and substitute a much wider offence. In Guyana though the evidence is scarce the international report on religious freedom the state allows the practice or religion-http://www.state.gov/g/drl/rls/irf/2002/14047.htm

26 Supra, n.2.

Though Christians may clamour for the restriction of obeah because of supposed spiritualistic or the threat of poisoning or deception involved, the strongest argument for the law's removal is the jurisprudential retardation of the legal system.

Pollock compares ritual to law as a bottle is to liquor the ritual being the container or method through which law operates from practice and routine. It is this predictable nature of law that in fact gives it legitimacy[27]. Though legal and ritual symbols differ in that to understand both the legal and ritual one has to understand the beliefs behind them, the legal differs in having a function. This functional distinction separates law from ritual but oddly the law's involvement in prescribing the religious practices of any group or person is really the functional ritual suppressing a ritual though to be functionless.

Brenda Danet's work on the dispute process has listed among the seven non-verbal methods the appeals to the supernatural and the use of the magical procedures[28]. Delegalisation problems of differential access to justice and alternative informal dispute resolution mechanisms highlight a possible counter argument for the retention of the anti-obeah laws. Abel says delegalisation presupposes equality between social actors, a high degree of normative consensus, and existing adequate informal controls. But in capitalist societies Abel contends delegalisation was detrimental to the interests of the weak, which makes it better for the rule of law to exist[29].

Thus if obeah is used as Danet's work suggest to be a non-verbal method of dispute resolution and really is not the practice of a religion but really the use of religious rites and rights to circumvent the rule of law then the Obeah Act should remain, though the other side of the coin contends that the Offences Against The Person Act is sufficient to hold persons for the crime of poisoning or injury to persons through medicinal drugs or circumstances.

Unless the state has facilitated legal pluralism not just ethnic and religious pluralism the presence of alternative dispute resolution avenues

27 Lloyd's Introduction to Jurisprudence Seventh Edition, M.D.A. Freeman, Sweet & Maxwell: London, 2001. P 857

28 "Language in The Legal Process" Brenda Danet in Lloyd's Introduction to Jurisprudence Seventh Edition, M.D.A. Freeman, Sweet & Maxwell: London, 2001

29 Ibid.

has to be curbed. In cases of vigilante justice to resolve disputes the law has the ability to intervene circumscribing these methods. Unless the existence of the unofficial legal system offered by the practice of obeah does not seem to pose challenges to the formal legal system or the legal ideologies. The knowledge or perception of the practice of obeah in this way may not have been done, but nonetheless, the defence of the anti-obeah laws may not have been articulated, the arguments are still valid.

Savigny's double life really exists within states where obeah is proscribed because the law though it originally exists in the common consciousness, the minute cultivation and handling needs to be handle by jurists[30]. The other side of the argument is that as an alternative system of dispute resolution is where the act speaks to obeah it is a unilateral means of solving disputes not a means of arbitration but a means of applying "oil a love me" to solving issues of marriage dispute. Further the practice of obeah as the law speaks to it does not have the normative character of law. But no conclusive statement can be offered.

E. A. Hoebel's work on the "Law of Primitive Man" notes that acts of lynching for excesses in sorcery are but a blunt crude tool wielded by the gang hand of an outraged public. In the case of a less crude tool, that of corporal punishment with sentences of a year imprisonment with whipping being removed as a form of punishment within that state, the exercise is still that of a primitive law. In fact it is the exercise of a blunt crude tool wielded by the legal hand of a scared juristic community[31].

In the United States single faceted ideologies, which may include things such as vegetarianism or social Darwinism, the courts have denied them the religious protection guaranteed to other well-established traditional religions whilst allowing them religious freedom. Similar stances have been taken with newer more religious institutions such as the Neo-American Church contesting its religious status and rites as regards psychedelic drugs in the District of Columbia[32]. **US v. Kuch**[33] the court came out on the matter of religion:

30 Supra, n.12.

31 Ibid, pg 929-33.

32 Supra, n.19.

33 United States v. Kuch, 288 F.Supp. 439 (DDC 1968)

> " It is necessary to find a clear-cut boundary between religious creeds and personal codes of conduct that lack spiritual commitment. Those who seek protection in religious activities, must not be allowed to enjoy the special liberties and prerogatives of religion for the sheer fact that they adopt a religious terminology and cynically use it to protect their activities, even anti-social or anyhow unapprovable ones."

McKenzie and Alexis' arguments about the historicity of obeah does not augur well because in other legal systems antiquity, ancient indigenous practices, and former communities were not enough to legitimize or authenticate religious systems such as Paganism. Paganism has the religious elements, myth, legend, and lore. But lacking is a system by which authoritative statements can be made[34].

Paganism and obeah share similar stigmas. The same association with witchcraft exists that is inundated with accusations of criminal activities relating to their rituals, inaccurate media profile, and practitioners operating solo. It is no wonder if religious status is conferred on obeah, organized practice is non-existent to support the conferment though the law's current status is undoubtedly a reason for the practice related to the religion in private or small groups[35].

Obeah's other stigma it shares is with satanic ritual abuse. Satanic ritual abuse allegations have a subjective element that can be attributed to distorted memory, false reports, hysteria, psychological hysteria, psuedologia phantastica. This cannot be a basis for denying or making it illegal unless the abuse consists of unlawful acts. But even if the negative side of the ritual practices of myalism is religious motivated no reason exists to limit the legal reaction to any specific religious system Edge argues[36]. After all as even McKenzie's paper concludes even Christian mainstream religions are guilty of using the position of supposed supernatural favour with God and knowledge of God to work on the superstition or faith of the gullible for defrauding.

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34 Supra, n.19.

35 Ibid

36 Ibid

Allegations of abuse and violation of the law have been made regarding similar abuse from other religions the Church of Jesus Christ of Latter Day Saints, Hinduism, Freemasonry, as with traditional African religions such as myalism and its ritual, obeah. Children sacrifice by alleged Satanists is no different than those of documented cases of children killed during improvised religious ceremonies by Christians[37].

Edge in speaking on problems posed by paganism alluded to the similarity with non-recognition of paganism as with the PLO (Palestine Liberation Organisation) because of lack of anyone to speak on the organisation's behalf. The SPIN concept or the segmented polycentric integrated network, which typify the pagans, lacks hierarchy and structure as traditionally is sought. These segmented polycentric networks do not disqualify the pagans as it does for obeah practitioners because the early church and Pentecostal movements had these characteristics, and is symptomatic of antagonistic environments and non-conducive environments[38].

It is not about requiring those practising obeah having to meet such requirements because the European Court of Human Rights has set out its view of such organisational changes as problematic from the case of ***Canae Catholic Church v. Greece***[39] the legal personality of the church would have posed problems unless the right to fair trial had not been used to allow the church to sue. Rights may be able to override definitions but the definitions so far determine if any rights exist subject as always to non-interference with the rights of others.

The Charity Commissioners of the UK held that the public perception of a religious system should not be used to prevent registration under charity law. Edge reveals that in the United States there has been moves to legislate specifically for ritual abuse the argument being that with the wealth of laws that generally apply there is still the fear or need to deal with this particular brand of criminal practice. I wholly agree with Edge counter argument, specifically targeting adds little to deal with the problem of ritual abuse and abuse of myalism with obeah. Clapton writing on the matter highlights it has been a feature of discriminating that ritual abuse be held to only non-mainstream religions. The abuse of the mainstream

37 Ibid

38 Ibid

39 27 E.H.R.R. 521 (1999)

religious groups does not feature heavily in the discussions and even if it did those with heavy ritualisation would be targeted[40].

The courts do not have the final say regarding what are international recognized freedoms where the focus has been on the individual and less that of the communal interest. In fact part of the bias against the practice of obeah stems from the size of groups Edge writes size of groups can make the big difference in how they are treated or recognized by the law. Similar issues arise regarding whether the religion is established, but denying religious freedom to non-established groups is discrimination denying the individual the free exercise of belief and religion. Doctrinal issues should not preclude a religion's adherents from practicing unless the doctrine implicates itself in illegal activities that violate other laws besides those meant to control or prohibit the religion[41].

The Aum Shinrikyo cult for example used murder to silence supposed threats and critics along with the general public as it relates to gassings in 1994 to 1995[42], but the reaction has not been to make it illegal but to watch the group.

Jhering suggests that in society coercion can be separated into the organised and unorganised forms, the former being the law and the latter being social convention and mores. For the law to function successfully Jhering postulated that a balancing of interests was needed though he did not provide a clear scale if any[43]. Really based on the facts before us it really is the case that the anti-obeah laws have placed the beliefs of myalist practitioners on the scale of restriction whilst as Mckenzie highlights giving freedom to the same interests of belief and religion to those nominally Christian.

Max Weber argues that when law functions with substantive rationality it becomes guided by things like religion and vaguely as Lloyds put it justice. There is the lack of procedural formality to restrain and consistency in applying the law. Weber's theory juxtaposed to Professort Patchett's denunciation of obeah places those legal systems still persecuting and prosecuting the myalistic practitioners within the seemingly substantive

40 Supra, n.19.

41 Ibid.

42 Information may be found at http://cfrterrorism.org/groups/aumshinrikyo.html

43 Supra, n. 12. Pgs 662.

rational. Though a level of procedural formality exists where legislation sets out procedure the consistency is elusive for the exact nature of obeah is based on pretensions and mere allegations that have yet to be substantiated[44].

Durkheim's view of the law generated criticism that is quite helpful on the matter of anti-obeah laws. Durkheim posited that repressive law would diminish as we move away from the simpler societies to the more modern state. Others such as Barnes opine the modern state is more repressive. Lenman and Parker push forward that the English legal system became more repressive as it moved along from community law to modern state law. They show how previous civil wrongs move to the status of being assaults against the King's peace[45]. If we place their theory alongside the way obeah has developed the similarities are the same. Initial the community on the plantation was a slave one where the practice of it would have probably been met with severe punishment by the excesses of the planter but in the enslaved's respective settings there would have been ostracism and other means of social checks to deal with the excesses of social abuse. De Leisser hints that those who would consult would be disdained. Through the saving law clause not only has the community reaction changed but the state has now replaced the plantocracy exacting its punishment on those myalism practitioners.[46]

Similarly other critics like Luke and Scull say that the legal system can function as the reaffirmation of the collective identity, which harks back to Savigny, in the state adopting a greater depth and form of repression in the law under the surface or subliminally that involves stigmatization and the exclusion of alien elements, which for this case is obeah practitioners. In a quasi-Durkheimian way the state doing so reaffirms a nation's popular Christian identity. Thus much of the defence for the law staying on the books is the Christian community[47].

Eugen Ehrlich contends that justice and the balancing of interests really rests with society and not in the general with the jurist, writer or teacher, judge or legislator[48]. Though Ehrlich reduces legislation's role in the matter, though the law practiced throughout the Caribbean is somewhat

44 Ibid, pgs. 662-666

45 Ibid

46 Supra, n.9.

47 Ibid

48 Supra, n.12. pgs. 670-72.

the same (exceptions being St.Lucia and Guyana it really is the society's composition that has facilitated the repeal of anti-obeah laws. It is the societies that balance the interests not by making law but in some cases by preventing the change from occurring in law. Even where society may be opposed the final say is with the legislature but the anti-obeah laws must face the reality of a society that does not want the practice to be free. A strong legislature and courts as the other jurisdictions have shown are required.

Roscoe Pound posits that law acts as a means of social control to satisfy the different just claims with tandem desires ensuring our social needs are meet with ordered conduct that has the least friction and waster of effort. This stands out true in relation to the anti-obeah laws, as was earlier argued with the theory of conflicting systems of social control the court and the obeah man as dispute resolvers the conflict is one that stands to the courts though allegations that it has been tried as a means of subverting the courts. Pound maintained that in an era of mass communication finding out what the just claims and desires were required finding out how they were expressed[49].

Consulting the obeah man though an expression of a desire for a claim the unjust nature of such a claim may disqualify it. If we are to take Pound's theory of balancing interests the need to take into consideration the other side means the difference between the built-in-bias for the social view which in anti-obeah laws is the society is threatened with unchristian practices that could threaten their religious beliefs buttressed against the individual interest of the practitioner to satisfy the spiritual need.

Pound gives law the purpose of satisfying wants but he cautioned that law should not interfere in every course of human relation and where someone thinks a social want may be satisfied. If the sacrifice of other claims is disproportionate; the law needs to function in an almost utilitarian way.[50] The anti-obeah laws need to be removed or at least incorporated within the other existing acts the religious nature of the crime outlining that no religion will be specifically targeted but rather that the religious nature will not be a valid excuse when it is believed that unlawful acts and fraudulent acts have been done. The Act itself can be removed. That is where the law needs to move recognizing that targeting a religion is by no means the way

49 Supra, n.12. p.721-27.

50 Ibid.

for the law to operate but looking beyond the religion to find the errors is what the law should allow us to do.

If individuals wish to gain from the superstitions, allow that to be done for already the gambling system facilitated in the very states with such laws are enriched based on the superstitious attachments of dreams, numerology, and luck. Law cannot rule on superstition leave that to the priests and the magicians.