ANALYSIS OF THE NATURAL LAW THEORY AND ITS RELEVANCE TO EMERGING GLOBAL JURISPRUDENCE

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INTRODUCTION

There are several generally accepted theories concerning the origin of law. A theory is a comprehensive explanation concerning some aspects of how society works. It directs one's thinking on the subject by offering explanations and allowing predictions to be made concerning the future contingencies. In short, a theoretical viewpoint governs the way that a social phenomenon is seen and understood. Where law came from, and why it developed as it did are questions that can be approached by using theoretical perspective of different writers.¹

Although each legal philosophy is usually treated separately for the sake of simplicity, in reality, the idea of a jurist may embrace different theories. It is also noteworthy that the theories have been applied in varying degrees by virtually all the legal systems in the world at different times in their legal history.

THE NATURE, ASPECTS AND FEATURES OF NATURAL LAW

The natural law view of law is about the oldest and most enduring of all. The major thrust of its argument is that there are two laws: natural law and man-made law. The former is the higher and superior law. The latter is inferior and should emulate the former.² Reduced to its simplest term, natural law means what is ‘fair’, ‘just’ or ‘right’. The protagonists of natural law theory hold that there are certain objective principles in every man, no matter his race or colour, telling him what is ‘fair’, ‘just’ or ‘right’; motivating him to do what is good and abstain from

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1 Hazou, W., The Social and Legal Statue of Women, A Global Perspective (New York: Praeger, 1990), 29-20. The various beliefs of writers on law have come to be known as ‘Philosophies of Law’, ‘ Schools of Jurisprudence’ or ‘Theories of Law’.

what is evil. These external principles telling man what is fair, good just or right are referred to as natural law.³

Natural law has been defined as or described as the law of nature, higher law, external law, divine etc. While explaining the scope of natural law, Roman orator, Cicero, said as follows:

True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions. And it does not lay its commands or prohibitions upon good men in vain, though neither have any effect on the wicked. It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligations by senate or people, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome and at Athens, or different laws now and in future, but one eternal and unchangeable law will be valid for all nations and all times, and there will be one master and ruler, that is, God over us all, for He is the author of this law, its promulgator, and its enforcing judge. Whoever is disobedient is fleeing from himself and denying his human nature, and by reason of this very fact, he will suffer the worst penalties, even if he escapes what is commonly considered punishment.⁴

According to Burlamqui:

Natural law comprises rules which necessarily agree with the nature and state of man that, without observing their maxims, the peace and happiness of society can never be preserved... They are called

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³ Illustrating the natural law theory, Okunniga said: ‘if ten men from different countries are put in separate rooms and each of them is asked in the language that he understands, whether it is good to steal, majority will say no’. See Okunniga, A.O., *Jurisprudence* (unpublished).
natural laws because a knowledge of them may be attained merely by the light of reason, from the act of their essential agreeableness with the constitution of human nature: While, on the contrary, positive or revealed laws are not founded upon the general constitution of human nature but only upon the will of God; though in other aspects such law is established upon very good reason and procures the advantage of those to whom it is silent.\textsuperscript{5}

According to Radbruch, in his \textit{Five Minutes of Legal Philosophy} (1945), “There are principles of law that are stronger than any statute, so that law conflicting with these principles is devoid of validity. One calls these principles the natural law or the law of reason… the work of centuries established a solid core of them”.\textsuperscript{6}

Natural law could be synonymously called the law of nature, divine law, eternal law etc. Natural law theories are basically theological or secular. Theological theories rely on allusion to God, the Holy Books and the Prophets in argument for the existence or validity of natural law. On the other hand, secular theories depend on human reason (or will). They canvass the view that natural law exists in rational human beings who are created by God. Because they are creatures of God, they possess the rational idea, the reasoning capacity to know what is good and what is bad. They have the intellect even without the assistance of another person to discover natural law or the law or nature. Guided by the ensuing knowledge, he is able to order his life, according to his choice, in a moral way or in an immoral manner. In other words, secular theories demystify natural law by detaching God therefrom, that is, by positing that natural law will or can be independent of God. Thus, on a rather extreme note, Hugo Grotius said that \textit{there would be natural law even if there were no God}.

\textbf{Essential Features of Natural Law}

From the above, it is possible to distil or extract the essential features of natural law as follows:

\textsuperscript{5} Burlanqui, Principles of Natural Law (1751). Quoted in Curzon, L.B., Jurisprudence 37 (London: Cavendish Publishing Ltd., 2\textsuperscript{nd} Ed., 1995), 60-68.

\textsuperscript{6} See <http://www.nou.edu.ng/NOUN/Jurisprudence-and-legal-theory-II/pdf>. See also Curzon, ibid.
a. Natural law is universal, unchanging and everlasting; it is not limited by
time, space and geography;
b. That which is good is in accordance with nature but that which is evil is
contrary to nature. Therefore, natural law is good;
c. There exists an order in nature which is rational and which can be known
by man;
d. There are absolute values and ideals emerging therefrom, which serve as
the validity of laws. A law lacking in moral validity is wrong and unjust. On
this basis, natural law invalidates certain manifestations of the positive law
and provides an ideal towards which the positive law should strive.
e. Existence of natural rights.\(^7\)

HISTORICAL ODYSSEY OF NATURAL LAW

The Greek Period

The Greeks were the first to develop a theory of natural law in about the 15\(^{th}\)
century B.C when they had become very advanced in civilisation.\(^8\)

The Sophists

The sophist’s school of philosophy led by Protagoras were the earliest natural law
thinkers. These were paid school teachers who were learned in philosophy. Their
contention was that law is made for the protection of the interests of the maker
and that the subjects obey the law for their own good. Indeed, the latter have no
choice in the matter, they must obey.\(^9\)

Observing the turbulence of their city states, the oppression and injustice in
society, and comparing and contrasting these with the apparent order and regular
pattern of nature, such as the rhythms of seasons, tides, life cycles etc., the
sophists began to ponder about state law, its raison d’ etre, its validity and
methodology. They concluded that man’s life was modelled after the peaceable

\(^7\) See Elegido, J.M., Jurisprudence (Ibadan: Spectrum Books Ltd., (Rep), 2007), 21-25. See also at
http://www.nou.edu.ng, ibid

\(^8\) Salmond on Jurisprudence (Londonz: Sweet and Maxwell, 12th edn, 1966) 1.; Adaramola, F., Jurisprudence

\(^9\) ibid, other prominent sophists include Gorgias, Podicus and Crities.
nature around him, but that he had forsaken and refused to follow it. If man would therefore return to the 'state of nature', as it were, he would be able to live a more certain life and enjoy a peaceful existence.\footnote{10}

From this reasoning, the principle that all men are equal crystallised in the course of time. Furthermore, they contend that the ideal of natural justice was imposed on man by nature just as purely physical laws were imposed on lower creatures and inanimate objects.

Although Socrates was not one of the sophists, he lived contemporaneously with them. His contention was that persons should work in a station in life where they are best suited, and that the proper measuring rods of the goodness of law are intelligence and reason. He was, in a sense, the inspirer and fore-runner of the stoic school of philosophy.\footnote{11}

\textit{The Stoics}

About a century after the establishment of the sophist school (i.e., about the 4\textsuperscript{th} century B.C) a new school of Greek philosophers called 'stoics' emerged under the leadership of Zeno. This school turned things around by contending that natural law was not an imposition on man from an external source but that it was in fact, those general principles of conduct which man’s own reason showed him to be desirable. The principles, they explained, are supposed to be common to the whole of the human race. For instance, according to Aristotle, ‘…natural justice is that which everywhere has the same force and does not exist by the people’s thinking this or that…’.\footnote{12}

Plato was easily the greatest of Greek Stoics. His contention was that the physical phenomena were a mere reflection of the superior order which was laid up in heaven and that man had to study these terrestrial phenomena in order to gain an insight into the ultimate pattern of life. According to him, only philosophers could undertake this study. He posited that rather than place emphasis on law,

\footnote{10} The sophists believed that the pattern of nature to be followed by man was set out in normative rules, for example, that man ought to be good, or that he ought to do justice, etc. Therefore, they concluded that such practices as slavery and tyranny and bad government would not be approved by natural law.

\footnote{11} Adaramola, ibid 15.

\footnote{12} Aristotle, \textit{Nichomechanian Ethics}, JE Dawson, in Adaramola, ibid.
emphasis should be placed on the administrator, and that since justice was a kind of ideal discoverable only by the philosopher, justice could only be attained in a polity ruled by the ‘philosopher-king’s’, justice through the application of natural law.\textsuperscript{13}

**The Roman Period**

The Romans did not develop the concept of natural law beyond the bounds by the Greek. Their leading philosophers merely adopted the Greek theory of natural law and added nothing intrinsically Roman to it. The Romans probably did not quite understand what natural law really was. Thus, for instance, Ulpian, one of their leaders equated physical laws with natural law. ‘The law is not peculiar to human race but belongs to all living creatures- birds, beasts, fishes e.g., mating, child bearing.’\textsuperscript{14}

However, there arose a group of Roman philosophers who professed to be scions of the Greek stoics, and adopted the same name. One of the prominent members was Marcus Tullius Cicero (106 – 43 B.C), an erudite and profound orator who appeared on the scene like an oasis in the desert by singularly grasping the very idea of natural law as Greek philosophers propounded it. He called natural law ‘the true law’ and went to give a definition of the natural law as ‘right reason in agreement with nature,’\textsuperscript{15} a definition that has greatly influenced the direction of natural law development through the succeeding centuries. He was the first to enunciate the revolutionary principle that any positive law that contradicted natural law should be disobeyed and destroyed.

The following are the main similarities between Cicero’s ideas and Greek thought on natural law:

\textsuperscript{13} Plato, *The Republic* 1, ibid. Neither Plato nor Aristotle, his disciples conceived natural law as a system of overriding norms. Indeed, Aristotle did not think that natural law was essentially immutable. For detailed analysis of the ‘Greek Philosophers Period’, see Ladan, M.T., *Introduction to Jurisprudence; Classical and Islamic* (Lagos: Maltthouse Press Limited, 2010), 47.

\textsuperscript{14} Similarly, other Roman jurists confused *jus gentium* (ie, the law of nations) with the *jus naturae*. Thus, Gaius while contrasting the civil rights with the *jus gentium*, wrongly said, that *jus gentium* was ‘that which natural reason has appointed for all men as in force equally among all people being the law applied by all races. See Gaius Institutes (cir.A.D.60), In Adaramola, ibid

\textsuperscript{15} Cicero, *The Republica*, 211: III 22-23.
a. That natural law is higher law to, and overrides positive law. ‘Senate and people cannot free us from our natural obligations’.

b. The principles of natural law are revealed to man through his reasoning faculty

c. That natural law is immutable and of universal application

d. That natural law could, neither be altered, repealed nor abolished.

EVOLUTION AND METAMORPHOSIS OF NATURAL LAW

The Middle Age/ Medieval Period

The leading natural law protagonists of this period were: Thomas Aquinas, Hugo Grotius, Thomas Hobbes, John Locke, Jean Jacques Rousseau and Thomas Paine, whilst it’s leading antagonist were David Hume, Jeremy Bentham and Henry Maine.

The theory of natural law became extremely popular during this period for two consequential reasons. First, it combined conservatism with liberalism, and, secondly, in an era of profound piety, it was based on semi-theological premises. Again, it may not be thought contemptuous to say that the philosophers of the time, having found the ready-made natural law theory very convenient to adopt and apply, must have become indisposed to making an effort to search for new ideas to which they could stamp their own ingenuity. However, they succeeded in evolving and grafting onto the central theme of natural law, the doctrine of the social contract, initially to justify the powers of the state. The main

16 Although, Ladan posited that the early Christian writers took up the stoic’s belief in the brotherhood of man, they were indifferent to the idea of universal law of reason upon this earth. According to him, the impact of Christianity on Platonism is revealed in St. Augustine’s famous work, The City of God, in the first century, where he equates the Platonism of ideal justice with the conception of The City of God on earth when Christian justice will at last reign supreme. Natural law is thus equated with divine law, partly miraculously revealed, and partly ascertainable by reason, but the defect in man’s existing nature due to sin call for natural law which lacks many of the features of ideal justice. At the same time, the linkup between natural law and Christian theology vastly increased its authority compared with that of older stoic law of nature. For natural law was now imposed by God and was expounded by the head of catholic church, the Pope, who as the vicar of God, was invested with the power to expound and interpret the law of God, which was binding on all men, rulers and the ruled alike. See Ladan, ibid 48.
theme of the social contract doctrine was that the sovereign was above positive law though subject to natural law which, alas, if breached by him, was not sanctionable against him. Thus, the subjection of the sovereign to natural law was purely in rhetoric not in life.

SUMMARY OF WORKS BY SELECTED NATURAL LAW JURISTS

Thomas Aquinas (1224- 1274 A.D)

Aquinas, an Italian monk, was a theoretic natural law theorist and the pre-eminent jurist of his time. The Christian doctrine of natural law is based entirely upon his work. His success in synthesising Aristotelian (i.e. pagan) philosophy and the Catholic faith in a universal divine law was truly remarkable and astounding. He stated that man's intellect and free will are the closest image of God in the material universe. He distinguished four kinds of law: the eternal law, the divine law, the natural law and the human law.\(^\text{17}\)

a. **Eternal Law (Lex aeternal)**

According to Aquinas, this is the law of God which controls all creation, i.e., the rationale guidance of created things on the part of God as the prince of the universe (which) has the quality of law.\(^\text{18}\)

b. **Divine Law (Lex divina)**

This law Aquinas explains, is part and parcel of eternal law being the revelation to man through the Holy Books.

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\(^{17}\) Adaramola, ibid 18-19. St. Thomas Aquinas, under the influence of Aristotle’s view of man as achieving his natural development in a political society, rejected the earlier Christian writer’s notion that law and government were rooted in sin and therefore necessarily was a highly rationalistic one in the sense that it relied heavily on truth as elicited by logic and deduced reasoning, but at the same time its premises were not chosen or rational grounds but were given by the beliefs of Christian theology. Aquinas set the pattern of modern natural law thinking in another vital respect. To him, natural law was not a system of rules which covered the whole sphere of human affairs… Aquinas recognised that nature was not an absolutely rigid conception, so that certain parts of natural law were destructible and could be replaced to meet the exigencies of changed conditions. See Ladan, loc. cit.

\(^{18}\) Aquinas, *Summa Theologica* (transl. J.G. Dowson) Qu. 91, in Adaramola, ibid
c. **Natural Law (Lex naturalis)**

Aquinas says that this law is a portion of the eternal law which is revealed to man through the exercise of his reason by which he participates in the eternal law. Accordingly, '… the first rule of reason is natural law.'\(^19\)

\[\text{\textit{d. Human Law (Lex humana) or Positive Law}}\]

As Aquinas pontificates, this is man-made law which must however be made to conform to reason and thus to natural law. Human laws are the particular dispositions arrived at by an effort of human reason provided that the other conditions that are necessary to law are observed.\(^20\)

Human law is however, inferior to the natural law and would be invalid if it conflicts with the natural law. Says Aquinas, ‘if a human law is at variance in any particular with the natural law, it is no longer legal but rather a corruption of law.’\(^21\)

Summarising Aquinas’ brilliant contribution to legal theorising, John Finnis described Aquinas as being in many ways the ‘paradigm natural law theorist who dominated the period from the church fathers to Kant.’\(^22\)

Although Aquinas connected natural law closely with God, he also emphasised its identification with human reason. Hence, some writers, for example, Dias, think that by emphasising the importance of man’s reason, Aquinas unwittingly paved the way for the secularism that subsequently developed and flourished during the Renaissance and has become ever stronger until the present day.\(^23\)

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\(^{19}\) Aquinas, ibid 1a-2ae, xci2:1a-2ae xcv.2 Qu. 91.

\(^{20}\) This is what John Finnis classified as ‘Practical Reasonableness’. See John Finnis, Natural Law and Natural Rights, 1980. Also, John Finnis, Fundamentals of Ethics, 1983, in Adaramola, ibid 43.

\(^{21}\) Aquinas, ibid, Qu.95. Art2. Conclusion.

\(^{22}\) Finnis, ibid 28.

\(^{23}\) Aquinas asserted that the whole hierarchy of law, including positive law was an inspiration from God. Natural law provides the general principles while state law furnishes the detailed rules of the system. Thus, by linking all law with God, Aquinas reoriented religious thought that existed prior to his time, which regarded all aspects of human life as being tainted with original sin, and positive law and government as merely necessary evils in man’s fallen condition. He rejected this old idea and treated human law as a God-based system. As a direct consequence of Aquinas’ influence during this period, natural law continued to be identified with human reason as in the Greek period, and also accepted as being universal and immutable.
Secularisation and Renaissance of Natural Law

a. Religion:

As a consequence of the schism in Roman Catholic Church, Protestantism emerged in Europe and as a result this culminated in religious wars between Roman Catholics and Protestants all over the European continent. Partly because of these religious wars and partly because of other social reasons, secularism grew and many people started to question the very idea of religion while some spurned it outrightly, turning their attention to pagan philosophies.

b. Government:

Absolute Government arose in this period. Kings contrived alliances with the middle classes and moved to crush the nobles and eventually succeeded to establish centralised personal regimes, for example, Spain, England and France.

c. Nationalism:

During this period, the spirit of nationalism received a boost as the various European princes rivalled one another and competed for pre-eminence on land and sea in scientific endeavours and voyages of discovery.

d. Revolution:

Two far-reaching national revolutions, the American Revolution (1776) and the French Revolution (1789) occurred within this period. Both of them were mainly inspired by the natural law theories and ideas of liberty, equality and fraternity. All the events of this period are fully reflected in the works of Hugo Grotius.

Hugo Grotius (1583-1645)

Grotius, a Dutch statesman and protagonist of absolute autocracy and generally regarded as the ‘Father of International Law’\(^\text{24}\), was the most eminent of the nationalist school of natural law. He gave classical expression to the foundation of natural law as well as to the principles of modern international law in his celebrated work entitled ‘De Jure Belli ac Pacis’. Natural law principles, he said developed in the human intellect independently of any divine authority, and, were

\(^{24}\) Hugo Grotius, *De Jure Belli ac Pacis Prolegomena*. This book constituted an indelible landmark in its authoritative treatment of the basis of law, the rational nature of man and the social nature of human society. Its importance was particularly enhanced by the fact that it appeared at the time of the dissolution of the European Christendom and the emergence of European sovereign nation states. See Adaramola, ibid 20.
immutable. He stated that 'natural law is so immutable that it cannot be altered
even by God'. ‘He cannot cause that which is intrinsically evil be not evil’.
According to Grotius, natural law principles, being principles of human reason
could be deduced in two ways:

i. A priori, ie, by examining anything in relation to the rational and social
nature of man as an individual; and

ii. A posteriori, ie, by examining the acceptance of these principles among
the nations.

In summary, it could be said that Grotius contributed substantially to the
development of natural law in the following areas: Secularism, Absolutism and
Internationalism.

Thomas Hobbes

An Englishman and a royalist sympathiser, philosopher and political theoretician,
was exiled in Paris, France, from 1640-1651 during the English Civil War. Like
Grotius, he stood for absolutist autocracy. He approached natural law from a
purely secular angle. In 1651, he published his great work entitled ‘Leviathan’
while still in Paris. In it, he contended that when man lived in a state of nature, he
lived in savagery, anarchy, belligerency and great insecurity and was continually
at war with his fellow men. In that condition, education and invention were
unattainable and social life, commerce and industry were impossible. Men lived in
perpetual fear, misery and interminable strife often ending in violent deaths. It

25 See Curzon, 63 in Adaramola ibid
26 Although, Grotius personally believed in the existence of God, he tried to make his theory of natural law
acceptable to all and sundry including the unbelievers. Hence he said that natural law could exist even if there
were no God since it is a law that is revealed to man through the exercise of his reason and his knowledge of
good and evil. Therefore, if natural law, being an attribute of man, exists independently of God, it is binding on
all-believers and unbelievers alike.
27 Grotius employed the social contract theory to support the power of the ruler. According to him, man joins
society for the purpose of self-preservation and the security of his person and property, and surrenders his
rights to the ruler in exchanged for these facilities. Though the ruler is subject to natural law, if he contravenes
it and rules badly, revolt against him is forbidden except in rare circumstances (which Grotius did not specify).
28 Grotius applied the principles of natural law and the doctrine of the social contract to the community of
nations postulating that the ruler and his state were bound to enter a wider society which would be governed by
international law- a portion of natural law.
was chaos and ruins all round. Life in such a situation, Hobbes stated, was ‘solitary, poor, nasty, brutish and short’. So as to secure order and personal security, man had to escape from this frightful situation by entering into society.

Hobbes identified two principles of natural law:

i. That every man ought to keep the peace to the best of his ability but when this became impossible he could employ all the means of warfare to defend himself.

ii. That every man should be willing, if others are equally so, to surrender his right of self-defence to a central power and to claim so much liberty in society as he would grant to his fellow citizens.

John Locke

He was an English philosopher who invigorated the doctrine of the social contract. Locke held the view that unlimited sovereignty was contrary to natural law and he postulated that the following limitations must therefore be imposed on it:

i. The sovereign must not exercise any arbitrary power over the lives and fortunes of the people, since they did not possess such power in the natural state and could not have surrendered it to him. After all, ‘nemo dat quod non habet’;

ii. The sovereign must not rule arbitrary but must rule through proper legislation and judicial system;

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29 In the state of nature, Hobbes said, there is no place for industry… no culture, no arts, no engineering, no navigation, no commodious building, no society, and which is worst of all, continual fear and danger of violent death.

30 The 18th century period, that is, after the renaissance, the notion that gradually gained ground and currency was that man possessed certain fundamental rights in a state of nature, and that when civil society came into being, he took over those rights into his newly gained civil status and these still remained protected by natural law. In England, John Locke gave this approach a valuable impetus by arguing that by the terms of the social contract the power of government was concealed only on trust by the people to the rulers, and that any infringement by the latter of the fundamental human rights of the people put an end to the trust and entitled the people to re-assure their authority. The American Revolution was strongly influenced by Locke’s philosophy.
iii. The sovereign can only deprive the citizen of his property with his
consent, and there should be no compulsory acquisition without the
payment of compensation;

iv. The sovereign must not transfer his power of legislation to anyone else;
   after all, ‘delegatus non potest delegare’.31

Jean Jacques Rousseau

Rousseau, a French philosopher, took a long leap towards the democratisation of
the doctrine of the social contract when he expelled sovereign from it. He posits
that man wishes to leave the state of nature but desires a form of society which,
while guaranteeing his protection, still leaves him with complete freedom.32 For
Rousseau, natural law conferred absolute and inalienable authority on the people
as a whole, who were regarded for this purpose, as constituting a somewhat
argued and mystically conceived entity, the ‘general will’ which differed from the
mere sum of the individual wills of the citizens.33

RELEVANCE TO MODERN TIMES

The natural law has not lost its relevance to modern times. The notion of natural
law led to the incorporation of constitutionally guaranteed rights of citizens in the
USA Constitution and written constitutions of most democracies of today. Appeal
to natural law seems inevitable in the modern world to find solutions to the
tensions between law and morality arising out of several factors. Natural law, no
doubt, has its merits and demerits as would be considered below.

MERITS

The advantages of the Natural Law School are numerous, however, for the purpose
of this work, only a few would be mentioned.

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31 Locke imperfectly anticipated Montesquieu by championing the tripartite division of state power into: The
legislative, the executive and the federative.


33 See Ladan, ibid 51. This doctrine of ‘general will’ was, from one point of view, a good deal more
revolutionary than that of Locke, since it implied that the people were the real rulers and could overthrow at
their discretion, any reigning monarch. It was in the light of this philosophy that the French revolutionaries
ultimately overthrew the then regime and sought to impose the natural law of reason in its place.
It is undeniable that many of the concepts that have helped shape our society today were birthed from natural law thinking. For instance, the **Fundamental Human Rights**, embedded in Chapter IV of the Constitution of the Federal Republic of Nigerian, 1999 (as amended) was influenced by natural law philosophy. Natural law is also said to be the basis for the development of the **concept of equality and democracy across the globe**.\(^{34}\) Many countries have invoked natural law thinking in dealing with issues **relating to war and independence**. The Americans invoked it in their war of independence from Britain. The French also invoked it during the French Revolution; and the **Africans used it in their struggle for independence from their colonial masters**. In the aspect of equality, there is no doubt that natural law thinking influenced the clamour for a more equitable share of the revenue from the petroleum resources derived from the Niger Delta area in Nigeria.\(^{35}\)

Natural law has acted as a lever of justice, progress and reason, rather than as an instrument of oppression and injustice. Natural law also serves as a test for the ‘validity’ of man-made laws. It has helped in providing the philosophical basis for criticizing unjust laws. The principles of natural justice; **“Nemo Judex In Causa Sua”** and **“Audi Alterem Patem”** as well as the repugnancy doctrine were greatly influenced by natural law thinking. In Nigeria, prior to British colonisation, settlement of dispute was done in accordance with the principle embedded in the **“Audi Alterem Patem”** rule. For instance a saying in Yoruba, which undoubtedly has its parallel in other Nigeria languages, is that “only a wicked arbitrating leader would hear only one party to a dispute and hastily rush to judgement against the un-consulted party.”\(^{36}\)

Natural law has also brought about a call for reforms.\(^{37}\) It underscores the reasons why the powers of the ruler should be limited and justifies revolution should the

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\(^{34}\) Sanni, ibid 16.

\(^{35}\) ibid See also the case Attorney-General of the Federation v Attorney-General of Abia State & 35 others [2001] 7 SCNJ 1; [2002] 4 SCNJ 1.

\(^{36}\) Adaramola, ibid 67.

rulers go in breach of the terms of the general will of the people.\textsuperscript{38} It provides check against corrupt or inhumane systems.\textsuperscript{39}

**DEMERITS**

Natural law, in spite of its immense contribution to the development of law is not without some shortcomings.

The natural law school looked to right reasoning as a guide to discussing the most perfect form of laws.\textsuperscript{40} Right reasoning, it must be pointed out, is a criterion that cannot be verified through empirical scrutiny, as such it lends itself to the interpretation of the most powerful individuals in the society.\textsuperscript{41}

Another demerit of natural law is what is described as “the multiple conscience problem”. That is, different individuals may have different conceptions of ‘fairness’, ‘rightness’ and ‘justice’ with respect to the same issue. Two equally devout people can both assert that they are acting in accordance to natural law even though they are acting in opposite manner. Against this background, the theory could lead to anarchy if everyone is left to act according to the notion of what is ‘right’ and ‘just’ to him as dictated by his reason without any formal sanction. Consequently, the noble guise of natural law has been used to defend almost every ideology, ranging from absolute tyranny, intense racial/human right discrimination to democracy, liberation struggles. This is why the philosophy has been described as a harlot. For example, During the Human Right Discrimination Era in the USA which started in about 1870 when the Jim Crow laws was introduced.\textsuperscript{42} These laws promoted the idea of “separate but equal” which meant the races though having to be in different areas and not allowed to intermingle were equal. This was on the premise that, God created man black and white to maintain that separation. It took the bravery and courage of certain persons, amongst which is Rosa Parks to kill the operation of

\textsuperscript{38} All the military coups in Nigeria have been justified in terms identifiable with the natural law thinking especially as premised by Rousseau. He believes that State authority belongs to the general will and is exercised by the ruler as a delegate who remains in power at the pleasure of that general will.

\textsuperscript{39} Adaramola, ibid 71.

\textsuperscript{40} Sanni, ibid

\textsuperscript{41} Hazou, ibid 31.

such laws. Rosa Parks refused to give up her seat in a Montgomery bus heading to Alabama when a white person asked her for the seat. The usual practice was that, blacks only occupy the back seats in the buses.\footnote{Ibid.} This her singular act sparked a movement called the Montgomery Bus Boycott and led to the laws on discrimination buses to be changed. Other fighters were Martin Luther King Jr., Malcolm X, and Ruby Bridges. However, it was not until 1954 that almost all discriminative laws in the USA gave way after the historic case of \textit{Oliver Brown v Board of Education of Topeka}.\footnote{[1954] 347 US 483; [1954] US LEXIS 2094.} This case was a landmark United States Supreme Court case in which the court declared state laws establishing separate public schools for black and white students unconstitutional. The decision overturned the \textit{Plessey v Ferguson} decision of 1896 which allowed for state-sponsored segregation.\footnote{\url{http://www.wikipedia.com/brown_v_board_of_education_of_Topeka.htm} (accessed 28/08/2012).} The court unanimously (9-0) stated that, “separate educational facilities are inherently unequal”. As a result \textit{de jure} racial segregation was ruled a violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The ruling paved the way for integration of civil rights movements.

Apartheid is another example whose premise was also natural law; that God created man black and white because they are unequal. As such blacks were subjected to all manner of hardships, torture and inhuman treatment. It was that bad that, in visiting certain spots, a black man needed a permit otherwise he would be arrested and criminally charged. It took the courage and perseverance of persons like Nelson Mandela, Desmond Tutu, Thabo Mbeki etc and external pressure to get the system abolished.

Another flaw of the natural law school is that, natural law is unpredictable in character. Natural law serves as a tool in both the hands of the oppressors and the oppressed. Where these uncertainties result to bad ideology such as slavery, colonialism, dictatorship, the philosophy tends to do more harm than good. A good example is series of chronological revolutions presently occurring in the Arab World. The ousted oppressors such as Hosni Mubarak of Egypt, Ghadafi of Libya, etc all relied on natural law to justify their dictatorial rulership, likewise the liberation movements and majority of the masses for their own action in ousting their leaders.
Natural law has also failed to prove, using scientific methodology, metaphysical validation. For example, David Hume said that natural law is only real in the sense that some individuals entertain the feeling that it exists.\textsuperscript{46} He believed it was a figment of the imagination of fertile minds. He further stated that it cannot be asserted or demonstrated meaningfully, and concluded that it attempts to derive “ought” from “is”.\textsuperscript{47}

CONCLUSION

Natural law serves as a test for the “validity” of man-made law. However, natural law philosophy stresses ‘what ought to be done’ (i.e. \textit{lex feranda}) and not necessarily ‘what is done’ (i.e. \textit{lex lata}). In practice, the judiciary interprets what the law is and not natural law. Unless the principles of natural law are promulgated into law, their violation cannot be legally punished. Also, extremism in natural law must be discouraged to avoid its negative character.

\textsuperscript{46} See (n 6), 36.
\textsuperscript{47} ibid