

THIRTEEN PERCENT OIL DERIVATION REVENUE ALLOCATION TO THE NIGER DELTA REGION OF NIGERIA AS A HUMAN RIGHT

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Abstract

This article sought to justify the thirteen percent oil derivation revenue allocated by the Federal Government to the oil-producing States of the Niger Delta region of Nigeria as an expression of distributive justice, but more specifically, as a human right. The problem this study attempted to solve was the idea that the Federal Government was doing the Niger Delta State a favour. The position of this paper is that it is the right of the oil-producing states to receive this allocation. Complementary Reflection Philosophy and the natural law theory were deployed for justifying this argument. The methods used in this study were historical, conceptual and critical analyses.

Key words: Resource control, Human Right, Complementary Reflection, Natural Law, Niger Delta, Derivation, Allocation

Introduction: Resource Control and the Niger Delta

Agitation for control of petroleum resources in the Niger Delta region of Nigeria by the governors of the oil-producing states in South-South Nigeria stemmed from their notion of equity, fairness and precedence. The North, East and West had had control over their resources.

The Northern regional government was in control of the natural resources in the region. Motivated by this right of control, Sir Ahmadu Bello, the Premier of Northern Nigeria, set up Groundnut Marketing Board through which he utilized all the accruing revenue from the export of groundnut to United Kingdom. The revenue was used in the development of the Northern region. The then regional government built the Ahmadu Bello University, the Bank of the North among other things.(Nnoli, 1978:181, cited in Lukpata, 2013).

The Palm Produce Marketing Board empowered Dr. Michael Okpara's government in the Eastern region as it had control of the revenue accruing from the export of palm produce to the United Kingdom. The funding of African continental

Bank and University of Nigeria Nsukka among others therefore was easy. (Nnoli, 1978:185, cited in Lukpata, 2013).

In the Western region, within the colonial era, Chief Obafemi Awolowo, set up Cocoa Marketing Board and utilized the accruing revenue from cocoa export to United Kingdom in setting up the first television network in the country and in funding a free primary education policy in the Western Region (Nnoli, 1978:183, cited in Lukpata, 2013).

So, the Southern Governor's summit held on March 21, 2001 at Benin city adopted the definition of "resource control" as the practice of true federalism and natural law in which the federating units express their rights to primarily control the natural resources within borders and make agreed contributions towards the maintenance of common services of the sovereign nation state to which they belong (Dafinone, 2001:1, cited in Lukpata, 2013). The Southern Governors sought to have control over the petroleum resources on the Niger Delta so as to also develop the region and make it more economically viable. This came as a result of the inability of the Federal Government to develop the region. While we leave an analysis of the crisis in the Niger Delta region to a later part of this work, it is pertinent to mention that resource control presently resides in the Federal Government, with 13% of derived revenue allocated to the oil-producing states.

This article, relying on the complementary reflection philosophy and the natural law theory, argues that the 13% derivation revenue allocation to the Niger Delta is not only an extension of distributive justice, but, fundamentally, a human right. What is complementary reflection philosophy?

Complementary Reflection Philosophy

Complementary reflection philosophy was developed by Innocent Asouzu. It states that everything that exists serves a missing link of reality. Complementary reflection contains two principles, the principle of integration and the principle of progressive transformation (cf. Asouzu, 2003:58). Principle of integration serves a complementary ontology, while the principle of progressive transformation is a theory of rational praxis. Whereas the principle of integration specifies the general

metaphysical implications of the theory, the principle of progressive transformation specifies the relevance of the theory to human action.

The principle of integration as the metaphysical variant of the principle of complementarity states, that anything that exists serves a missing link of reality (Progress in metaphysics: The phenomenon of “missing Link” and interdisciplinary communication (Asouzu, 1990:82 – 91). The practical variant states that all human actions are geared towards the joy of being. The principle of integration and the principle of progressive transformation engender the imperative of complementarity which states: allow the limitation of being to be the cause of joy. The imperative of complementarity is the condition for the realization of the principle of complementarity in the relative and fragmented moments of existence. Otherwise stated, allow all world immanent realities, in their fragmentation, to be the cause of your joy.

When we say, “anything that exists serves a missing link of reality” and “allow the limitation of being to be the cause of your joy” what do we mean?

I begin with the latter. In the first place, one must note that Asouzu employs the category ‘being’ here in its traditional philosophical understanding as the unifying foundation of all existent realities (2004: 271). By the expression ‘limitations of being’, Asouzu affirms the fact that fragmentation is a constitutive characteristic of being in history (2004: 273).

The experience of fragmentation as an integral part of historical existence forms the methodological point of demarcation between all kinds of extensive reasoning and complementary reasoning. Complementary consciousness harmonises fragmented world immanent historical experiences in a manner that conveys authenticity to them (2004: 277). Missing links in Asouzu are the diverse units that make up an entity within the framework of the whole and as they are complementarily related. They are the imaginable units, fragments, components and combinations that enter into our understanding of any aspect of reality. They are also all the units and combinations necessary in the conceptualization of an entity or of the whole. They are thoughts and thoughts of thoughts, categories and categories of categories, units and units of units, entities and entities of entities, things and the things of things, ideas and the ideas of ideas (2004: 278).

Operating from his ambient, Asouzu is of the opinion that the idea that anything that exists serves a missing link of reality reflects the central paradigm of the anonymous traditional African philosophers of the complementary orientation. All existent realities, Asouzu maintains, relate to each other in the manner of mutual service (2004: 278). When we say that anything that exist serves a missing link of reality, how does a thing serve a missing link of reality?

When a unit is abstracted from the whole and viewed as completely isolated, discrete and discontinuous, it is seen as an independent non-relational entity. At this moment it could be said that they are missing in relation to one another. They are missing in the sense that, as discrete units, each can be viewed in isolation to each and in total disregard to one another. When this happens, a unit can be unaware of the other and in this moment, the one that it is unaware of is missing (Asouzu, 2003:59). This idea of complete isolation is, in Asouzu's view, counter-intuitive. In this counter-intuitive mindset, they stay in relation to one another, and for this reason, they serve a missing link (Asouzu, 2004:278).

Asouzu frankly maintains that to conceptualise discrete units in an authentic systematic way involves conceptualizing them as completely complementary to one another. This means that one must understand or conceptualize units implicitly and necessarily in complementary anticipation of the whole that gives them their legitimacy (2004: 278-9). Such consciousness that is complementarily oriented is a transcendent consciousness that is capable of 'sublating' (*aufgehoben*) the contingent immediacy of the moment and views units as existing now yet in a proleptic future referentiality. Authentic complementary reflection and actions are motivated by an experience of transcendent complementary unity of consciousness.

Later, in this work, we shall link this theory with the 13% derivation allocation to the oil-producing states of the Niger Delta region as a human right. We shall also present the Niger Delta problems which led to the actions by the government. Before that, let us take a voyage to a philosophical foundation of human rights through the history of the natural law theory.

Human Rights

The origins of human rights could be traced back to early philosophical and legal theories of the natural law. Two major philosophies encompass ideas on human rights. These are the humanistic philosophy of the enlightenment of the eighteenth century and Marxism as developed by Lenin. Some humanistic philosophies of the Enlightenment include the philosophy of Locke, Hobbes and Rousseau.

The concept of right traces its descent to the natural law theory. The development of the natural law theory through ages is the unfolding of the origins of rights in history. For a complementary understanding of the natural law theory, a consideration of analysis of rights becomes thematically necessary.

What is a Right?

A right, in its most general sense, is either the liberty (protected by the law) of acting or abstaining from acting in a certain manner, or the power (enforced by the law) of compelling a specific person to do or abstain from doing a particular thing (Opata, 1989:39). If right is not a right until the state has begotten it by legislative process or decree or confirmed it by the decision of a competent court, what then is right when we speak of fundamental human rights or inalienable rights of man? From where comes the inviolability, inalienability, humanity and fundamentality of right? These questions lead to an investigation into an ontology of right.

Every human being is a person and every human person who is capable of reasoning knows that he is a person. The consciousness of this personhood affords him or her the natural capacity to repel any constraint upon his or her humanity, personhood and freedom. This selfsame consciousness engenders a further consciousness, that is, the consciousness that he or she is a complete whole, and not a portion of any other human being. This affords a consciousness that he is an autonomous subject. It is owing to these features: inalienability of his humanity, personhood, freedom and moral autonomy that inalienability and fundamentality are characteristic of rights. Fundamental human rights are in man by the very nature of humanity. Human rights have an ontological foundation in the humanity of man.

Following this trend of thought, N.S.S Iwe affirms that human personality is the direct source of human rights. Naturality, fundamentality, humanity, universality,

inalienability and inviolability, imprescriptibility, and correlativity, according to Iwe, are the essential features of human rights (Iwe: 2000). Human rights flow directly from the natural endowments of the human person. This is the basis for the naturalness of human rights. What is meant by fundamentality of human rights is the fact that human rights are the foundation upon which other rights created by positive laws can appropriately be based. Human rights, as the natural foundation of all human values, are, according to Iwe, prerogatives and privileges of every member of the human race. In other words, promotion of human rights is a promotion of human dignity and wellbeing. This explains the humanity of human rights. It also entails that human beings are subjects of human rights. The fundamental principles of human rights, such as respect for human dignity, human equality, human liberty and human solidarity are applicable to every human being everywhere. This is the universality of human rights. By the inalienability of human rights is meant that no one may legitimately take away or deprive a human being his or her fundamental human rights. These rights are rooted in the very personal nature of man. These rights are essentially not subject to the passage of time. This is why human rights are said to be characterised by imprescriptibility. Correlativity of human rights explains how fundamental human rights are matched by fundamental human duty. Human rights are correlative to duty.

Lord Salmond explains right as an interest recognized and protected by the law, respect for which is a duty, and disregard of which is a wrong. (Osborn, 1964:283). Rights are demands or just claims which individuals make on the society. They are claims, demands and entitlements of individuals which are protected and recognised by the law. In this context, a right is a legal claim or demand, a legal entitlement which an individual or a group of individuals make on the society. Fundamentally speaking, rights are possessed by human beings who are endowed with reason, freewill and freedom.

Human rights are cherished entitlements endowed upon every person in virtue only by being human (Igwe, 6). They are those rights which the international community recognizes as belonging to all individuals by the very fact of their humanity (Umozurike, 1999:144). All human beings everywhere, at all times, have these rights by the very fact of their being moral and rational agents.

When closely examined we discover that there are certain elements in the concept of right which connote complementarity. It is the idea of relativity of right.

There is the owner or holder of right. There is also the act to which the right relates. There is an object of right, and the person or persons or legal personality bound by duty. There is thus a basic relativity in right. The holder of right is knit together by the agent who may respect this right. This agent, conversely, has rights which are expected to be respected by the other. The holder of right is at the same time duty-bound to respect another's right. There is an exception to this rule where an infant has a right to be cared for and protected, but is not bound by duty. This exception may extend to the insane. Every right involves a relationship between two or more persons. Right and duty are correlatives. Right-duty covers several relations. For example, if X owes Y N1000000, then Y has a right that X should pay the money. If Y owns a plot of land, then Y has a right to exclude X and others from his land. X and the rest are duty-bound to refrain from trespassing. If X and the rest infringe on the right of Y over the land, Y can seek legal remedy, for *Ubi jus ibi remedium*. In this and every situation right and duty are correlatives. Before tracing the history of human rights, it is interesting to end this aspect of analysis of right with some statements of authority. Legal rights are founded upon fundamental human rights. Fundamental human rights derive from the human autonomous nature. An investigation into the foundation of human rights would serve for ontology of rights.

Human Rights in the Natural Law History

Most observers may regard the promulgation of the Universal Declaration of Human Rights as the beginning of modern struggle to protect human rights, yet the origins of human rights is traceable to early philosophical and legal theories of natural law. Natural law theories agree that individuals were entitled to certain immutable rights as human beings. Natural law is the assumption that law is based on the rational nature of man. The rational element, reason, is the foundation of law. Little or wonder why Thomas Aquinas described law as an ordinance of reason, for the common good, promulgated by him who has care of the community (Aquinas: 1- 11, q. 90, a.1).

The natural law theory submits that there are fundamental principles which constitute the basis for proper human action and that the rightness of human actions is

assessed according to fundamental principles of human nature discernible through the application of reason. Njoku presents the presuppositions of natural law theory. First, natural law is based on value judgments which emanate from some absolute source and which are in accordance with the rational feature of the human being. Secondly, these value judgments express objectively ascertainable principles which characterize the essential nature of the human being. Next, it is given in this theory that the principles of natural law are unchanging and can be cognized by the proper employment of human reason. Moreover, these principle are said to be universal and superior to all positive law. Again, the natural law theory establishes that law is a basic requirement of human life in society (2001:38).

Ancient Time

The age of Homer and Hesiod was characterized by myths and gross superstition. Then it was superstitiously held that there was a world of spirits which controlled the physical world. This mind-set led to the idea that some higher forces controlled human existence and therefore, some higher sort of rules, principles or laws, discoverable by reason.

The Stoics are at the root of the history of the natural law theory. Stoicism conceives the world as an ordered whole where entities perdure following the principles of order. God, according to the Stoics, is the pervading rational substance which orders the whole course of events. God is in everything. God is reason as is in everything. Reason controls everything. Just as the world is a material order permeated by the fiery substance called reason or God so also man is a material being who is permeated by this very same fiery substance. When the Stoics said that man contains a spark of the divine within him, they meant that man contains part of the substance of God, which is reason (Stumpf: 113). Man, a fortiori, possesses the rational substance. The Stoics believed that human rationality, besides engendering the act of ratiocination, fosters man's participation in the rational order of nature. They emphasized a willing submission to nature as living naturally according to reason. The Stoic idea of law of nature was bequeathed to the Romans.

Led by Cicerone, the Romans embraced the Stoic legal legacy and transformed it to *jus gentium*. Cicero defined natural law as right reason in agreement with nature

(Lloyd, 108). For Cicero, the test of law is whether it accords to the dictates of nature. Nature, for Cicero, has endowed mankind with the law it must obey, discernible by reason. Thus, the Romans saw in the Greek idea of natural law a vantage point from where they sought justification for the *jus gentium*, which was deemed to enshrine rational principles common to all civilised nations (Malcolm Shaw, 15). Suarez stood in opposition to the Roman notion of *jus gentium* and sought to flaw it. This was because of elements of positive law in *jus gentium*.

Medieval Age and the Renaissance

Aquinas gave a succinct articulation of natural law. Law, in the Aquinian sense, is ordinance of reason for the common good, promulgated by him who has care of the community. Law (*lex*) is derived from ‘*ligare*’ (to bind) since it binds one to act. That law is an ordinance of reason is another way of saying that it is an order or command emanating from reason. It is not a suggestion or an advice (Dougherty, 115). It is not a command emanating from mere instinct, but reason. It is reasonable, observable, enforceable and useful. It is reasonable, but it is meant for the good of the community. Law is meant for the ordering of the society. Social control or societal order is the aim of law. Going further in this analysis of the description of law as given by Aquinas, one notices an element of jurisdiction. This is found in the assertion that the law should be promulgated by one who has care of the community. The right to impose or administer law explains the concept of legal jurisdiction

Aquinas gives a quadripartite division of law.

These are: Eternal law; Divine law; Natural law; and Human law.

Eternal law is God’s rational rule of all created reality. It is presented by Aquinas that the whole world is governed by divine reason, and since the conception of things by divine reason overcomes temporality, this kind of law is called eternal.

Aquinas was of the opinion that man is ordained to an end of perpetual bliss, and that there must be a law that can direct man to this supernatural end. This law is given by God to man through revelation in the scripture. This law is tagged ‘divine law’ by Aquinas.

Classically rendered, natural law, according to Aquinas is the participation of the eternal law in the rational creature. (*Summa Theologica*. p.1-11, q.91, a.2). This participation, he argues, is by natural inclination in man and through the first principles of practical reason. In short, man discovers the natural law by the natural light of reason in drawing conclusions about his nature. According to Aquinas, law, being a rule and measure can be in a person in two ways: in one way, as in him that rules and measures; in another way, as in that which is ruled and measured. And given that all things subject to divine providence are ruled and measured by the eternal law it is certain that all things participate in some way in the eternal law, since from its being imprinted on them, they derive their inclinations to their proper acts and ends.

The rational creature is subject to divine providence in a more excellent way than other creatures. The reason is because it partakes of a share of providence. It has a share of the eternal reason whereby it has a natural inclination to its proper act and end. This participation of the eternal law in the rational creature is called the natural law.

Human law, refers to the derivations or determinations from the general precepts of the natural law. The basic precepts of the natural law is that good must be done and evil avoided (*Bonum faciendum et malum vitandum*). Thus human law is the ordination of human reason through the mode of a determination deduced from the natural law.

Machiavellian secularism and subjectivity, based on naked expediency, eclipsed Thomist legalism. But ‘bravo’ to the Spanish duo of Suarez and Vittoria, who saw to the renaissance of Thomism. Suarez and Vittoria jointly reacted against Luther’s theology. Nice to hear Suarez where he said that the error which needed to be extirpated was “the blasphemous suggestion of Luther that, even for a just man, to follow the law of God is impossible” (Lloyd, 111).

Modern Period

Vittoria was at peace with the Thomistic distinction between *jus gentium* and positive law. Suarez, nevertheless, jettisoned the *jus gentium*, since it differed in an absolute sense from natural law, for, according to him, the *jus gentium* was a human positive law.

Grotius Hugo took hold of the Suarezian conception of the *jus gentium* and, charged by the Luther's theology of law, sought its formulation into a code of law to govern international relations. Eventually, Grotius Hugo concluded that natural law would be even if God did not exist (*etiamsi daremus non esse Deum*). Hugo thus relieved natural law of religiousity (Hugo, *De Jure Belli ac Pacis*, Prolegomena, para. 11). Bellarmine had preempted Grotius, where he affirmed that, even if per impossibility man were not God's creation he would still be a rational creature capable of interpreting the natural law (Lloyd, 112).

With Hobbes, Locke and Rousseau, natural law theory was discussed as a natural rights doctrine. The social contract theory was a daring attempt to construct a natural right doctrine.

The state of nature, according to Hobbes, is the condition of men living without government. In the Hobbesian state of nature, *homo hominis lupus*, man is a wolf to man. In this state of nature there is natural equality of human capacities, and perpetual conflicts remain the order of the day. Each man constitutes a threat to a fellow man. Hobbes describes the state of nature as uncivil. In the state of nature, there is no place for industry; because the fruit thereof is uncertain: and consequently no culture of the earth, no navigation, nor use of commodities that may be imported by sea; no commodities for building ; no instruments of moving, and removing such things as require much force; no knowledge of the face of the earth; no account of time; no Arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish and short (cf. McClelland, 194). In this state of being the law is that of self-preservation, since none could predict what he would do for the preservation of his life. The preservation of life becomes the right of nature. The right of nature, in Hobbes' view, is a precept, or general rule found out by reason, by which a man is forbidden to do, that, which is destructive of his life, or takes away the means of preserving the same; and to omit, that, by which he thinks it may be best preserved (cf. McClelland, 216). To allay the fear, insecurity, solitude, poverty, nastiness, brutality and brevity that surround the right of nature in the state of nature, men enter into a social contract. Men must surrender their individual right of self-preservation to a sovereign, whose sovereignty is unlimited. By surrendering their right

of nature to a sovereign who is not party to the social contract, men legitimize whatever the sovereign does. In Hobbes, the law of nature, therefore, lies in the fact that everyone has to surrender his right to everyone else and begin to respect the right of others. However, the Hobbesian sovereign is a dictator.

Natural right, according to Locke, is an entitlement under natural law, which is God's law. Locke argues that God did not create the world in vain. (One should note here that Locke appeals to God to justify his argument). Locke argues that God intended Adam and Eve to live as contented vegetarians. But since they rebelled against God, Locke continues, that they were punished, first, by expulsion from the garden, and for man, labour for his bread. Locke deduces from this story in the Biblical account of creation that man was granted the right to life, the natural right to labour and a natural right to the land he tilled and the fruits of his labour. The right to life, liberty and property as given in the twenty second article of the Universal Declaration of Human rights were argued for by John Locke, and so, discourse on human rights without a basis in the philosophy of John Locke is incomplete.

In furtherance of his arguments, Locke observed that each man knows by the natural light of reason that other men possess same rights as he does. And, again, that his rights must be respected by other men. Each man, for his rights to be respected, had to respect another's rights. Each man, then, becomes duty-bound to respect the rights of others. This reciprocity makes the state of nature social. Due to his imperfections, nonetheless, men would sometimes invade the natural rights of others. The right of judgement and punishment follow from here when men think that their natural rights have been violated by others. This is the right to seek redress for infringement on one's right(s). Rights would be useless save there is a right to judge when rights have been violated. Hence *ubi jus ibi remedium*. Men entrust the government their right to judgement on the condition that the government uses the right to judge when there is violation of natural rights. By so doing, men form the common wealth, *respublica*.

In the words of the man, Locke, *Men, being as has been said, by nature, all free, equal and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent. The only way whereby any one devests himself of his natural liberty, and puts on the bonds of civil society is by*

agreeing with other men to join and unite into a community, for their comfortable, safe, and peaceful living one amongst another, in a secure enjoyment of their property, and a greater security any that are not of it. This any number of men may do, because it injures not the freedom of the rest; they are left as they were in the liberty of the state of nature. When any number of men have so consented to make one community or government, they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest (Locke, Two Treatises of Government, 1690).

The power of government lies in the consent of the governed. The sovereign is part of the common wealth since he gives up his rights to the commonwealth. Sovereignty is entrusted to the sovereign, but if the sovereign betrays this trust, Locke argues, exercise of judgement reverts to the governed, and the governed are, then, at liberty to constitute a new contract.

Locke's theory of natural rights leaves a whole lot of political principles for governance. Such principles, inter alia, are the consent principle, majority principle, electioneering, right to civil disobedience and civil and political rights. Hobbes' sovereign is a 'Leviathan' who is not part of the commonwealth. Locke's sovereign is part of the commonwealth.

"Man is born free, but everywhere he is chains" is a significant expression of Rousseau's social contract theory. Rousseau sought to find a form of association which would protect the person and property of every associate with the whole force of the country and by means of which, coalescing with all, may obey only himself yet remain as free as before. In order to realize this association, Rousseau argues that each person must surrender all his rights to the general will (*Volente generale*) which is the commonwealth, *respublica*. Hence each of us puts in common his person and his whole power under the supreme direction of the general will; and in return we receive every member as an indivisible part of the whole (Jean- Jacques Rousseau, "Social contract", in: *Ideal Empires and Republics*, W. H. Wise & co. publishers New York, 1901, p. 13).

This act of association produces a collective body, composed of many members, and which receives from this same act its unity, its common self (*moi*), its life, and its

will. According to Rousseau, this collective body, which was initially named city, now takes the names “republic or body politic”, when it is passive, “sovereign” when it is active, and “power” when it is compared to similar bodies. The associates are collectively named “people”, and are individually called “citizens” as they participate in the sovereign power and are called “subjects” as they are subject to the laws of the state (supra, 14). As a free agent the individual gives up his liberty to the general will and remains subject to it, for “man is born free, but everywhere he is in chains”. How and in what sense can the autonomous wills of individuals be understood as constituents of the general will? Rousseau appears not to have addressed this question so as not to unmake the general will amorphous and nebulous.

Under the “divine right” of Kings, English Monarchs lorded over England. This was the age of the Tudors. This was the historical situation into which Locke was born and in which he lived. Against this historical setting, Locke wrote the *Two Treatises on Government*, and thus set the pace for a civil unrest. Locke reacted against the despotism of the Tudors and ideologically, yet actively, set the 1688 Glorious Revolution in motion.

The natural right theory of John Locke influenced the American fathers in no small way. The American nation was founded on the principles of life, liberty and happiness. The federalist fathers, reacted against the dictatorship of King George III. And so, led by Thomas Jefferson, James Madison, Thomas Paine, etc, they declared independence from England on July 4, 1776. The political philosophy of John Locke and the doctrine of separation of powers of Montesquieu were the ideologies upon which the American state and constitution were founded.

The Declaration of the Right of man and Citizen was influenced by the views of the Greek and Roman natural law philosophers and social contract theorists, especially the natural rights theories of John Locke and Jean-Jacques Rousseau. From these thinkers were derived the political ideals of liberty, Equality and Fraternity (Liberte, Egalite, Fraternite), which served as the motto of the French Revolution of 1789. Rousseau’s political philosophy which influenced the French Revolution of 1789, and the revolution, itself, were reactions against the ancient regime of the Bourbon dynasty which culminated in the regime of the Sun King Louis XIV. Violations of the rights of

man and reactions to such violations have led to developments of the human doctrine in the modern time: Locke's natural rights theory against the divine rights of kings; the American Declaration of Independence against the authoritarianism of King George III; Rousseau's social contract theory and the French Revolution of 1789 against the tyranny in the *ancien regime*.

Lauterpacht remarks that the 1789 Declaration of the Rights of man and citizen, the constitution of Virginia of 1786 and the 1776 American Declaration of Independence were the first constitutional instruments of modern times to proclaim the natural rights of man and also to assert that such must form a part of the law of the state (1964:75). De Gaulle and Pompidou enshrined these inviolable rights in the French constitution and thus set the French Republic upon its modern cause.

The origins of human rights in legal history, as given above, are traced back to early philosophical and legal theories of the natural law. These theories were of the idea that individuals are entitled to certain immutable rights as human beings.

Contemporary Concerns on Human Rights

Contemporary concerns with natural law would not be complete without the ideas of Lon Fuller, H. L.A. Hart, John Finnis, Dworkin and Hefeld. Lon Fuller rejected Christian doctrines of natural law and the natural rights theory of the seventeenth and eighteenth centuries. He did not subscribe to a system of absolute values. Yet he found in the various natural law theories the search for principles of social order. Hence "I discern, and share, one central aim common to all the schools of natural law, that of discovering these principles of social order which, will enable men to attain a satisfactory life in common" (cf L loyd: 129). In all these theories of natural law it was assumed that the process of moral discovery is a social one, and that there is something akin to a collaborative articulation of shared purposes by which men come to understand better their own ends and to discern more clearly the means for achieving them. Fuller emphasizes, in *Anatomy of Law* (1968), the role of reasoning in legal ordering.

From a sociological ambient H. L.A Hart, attempted to restate a natural law position. Hart presents certain facts of the human condition which must lead to the existence of a 'minimum content' of natural law. Human vulnerability, approximate

equality, limited altruism, limited resources, limited understanding, and strength of will are these facts of the human condition, according to Hart. For him, a “natural necessity” follows from these features of the human condition, for certain minimum forms of protection of persons, property and promises (cf. Lloyd:134).

John Finnis attempted to restate natural law by seeking to eliminate pure naturalism in the natural law tradition. His argument is that natural law does not necessitate a belief in morality as comprising observance of rationally demonstrable principles of behaviour. He decries the claim that natural law requires laws which infringe such principles to be impugned as invalid.

In defending Aristotle and Aquinas on the view that natural law essentially refers to what conforms to reason, Finnis states that natural law is the set of principles of practical reasonableness in ordering human life and human community (Finnis, 1980:35). He mentions certain basic human values which every reasonable person must assent to as objects of human striving. Life is the first of basic value. This first value corresponds with the drive for self-preservation. Next is knowledge, which is a preference for truth over falsehood. This corresponds with the drive for curiosity, for man, by nature, desires to know (Aristotle). Finnis is of the opinion that knowledge is sought for its own sake. However, knowledge must be seen as serving an end. The third value, according to Finnis is play, a performance for the sake of it. Next is the aesthetic experience, which is the appreciation of beauty. The fifth value is sociability of friendship. Here, Finnis argues that human beings act for the sake of one’s friends’ purpose or well-being. The ability to bring one’s own intelligence to bear effectively on the problems of choosing one’s actions and life-style and shaping one’s character explains what Finnis calls practical reasonableness, which is the sixth of these basic values. The seventh one is religion. This is the ability to reflect on the origins of the cosmic order and of human freedom and reason (Finnis, 1998:86 – 98). Finnis warns that law must not be studied in isolation from natural law.

In his *Taking Rights Seriously*, Ronald Dworkin affirms that anyone who professes to take rights seriously must accept the ideas of human dignity and political equality. Thus anyone who claims that citizens have rights must accept ideas very close

to these (Dworkin, 1977:199). Dworkin's description of rights is found in his will or choice theory and in his interest or benefit theory of rights.

The will theory of rights is upheld by those who view the purpose of the law as being to grant the widest possible means of self-expression to the individual, the maximum degree of individual self-assertion (Lloyd:441). The will theory identifies the right-bearer by virtue of the power that he has over the duty in question. He can waive the right, or extinguish it, enforce it or leave it unenforced. What he does is his choice, emanating from his will. According to the Benefit Theory of Right, which bears similarity to the thoughts of Raz, Bentham, Campbell, Thering, MacCormick and Lyons, the purpose of rights is not to protect individual assertion but certain interests. Accordingly, rights are benefits secured for persons by rules regulating relationships. Whereas will theory of rights covers liberties the interest theory covers all categories of rights: socio-economic and civil and political rights.

Hohfeld argues that every right, *strictu sensu*, implies the existence of a correlative duty, but that not every duty implies a correlative right (Hohfeld: 1923). He felt an ambiguity in the concept of rights and so sought for its analysis among other concepts such as duties, privilege, power, immunity, liabilities, no-rights, disabilities. These eight concepts enter jural relations. Rights and duties, privileges and no-rights, powers and liabilities, immunities and disabilities are correlatives. A duty or a legal obligation is that which one ought or ought not to do. Privilege is the opposite of a duty, and the correlative of a no-right. Legal power is the opposite of legal disability and the correlative of legal liability. Immunity is the correlative of disability (no-power) and the opposite, or negation, of liability. According to Hohfeld, a power is contrasted to immunity just as a right does to a privilege. A right is one's affirmative claim against another. A privilege is one's freedom from the right or claim of another. A power is one's affirmative control over a given legal relation as against another. Immunity is one's freedom from the legal power or control of another as regards some legal relation (cf. Lloyd, 546). These eight concepts, according to Hohfeld, are the lowest common Denominators of the Law.

The Niger Delta and the Federal Government

The Niger Delta region of Nigeria, located in the southern part of the country, is the region that produces oil – the lifeline of the Nigerian economy. The region comprises the nine states Rivers, Akwa-Ibom, Delta, Bayelsa, Cross River, Edo, Imo, Ondo and Abia. Since 1956, when oil was discovered in commercial quantity in Oloibiri in present day Bayelsa State, Hydrocarbon resources have been the engine for Nigeria's economy, as oil provides 95% of Nigeria's foreign exchange earnings and 80% of the government's budgetary revenues (Davis 2010:1–2, cited in Ajodo-Adebanjoko 2017). For Ajodo, since 1970, the country has earned at least \$300 billion from energy development and in 2005 it made \$450 billion. With about 40 million barrels of proven oil reserves, it currently produces 2.4 million barrels of oil per day, which constitutes about 90% of the government's revenue and 95% of the country's foreign exchange earnings (Ajodo 2002:6). According to the Nigerian National Petroleum Company, Nigeria's oil production accounts for 8% of the Organisation of Petroleum Exporting Corporation's (OPEC) total daily production and 3% of the world's volume. However, the discovery of oil, which was expected to improve the lot of the communities where it is sourced, has become a curse rather than a blessing because of oil exploration activities and its attendant hazards, such as air and water pollution. This has led to the indigenous people demanding compensation as well as control of the oil wealth. This demand has led to a confrontation between activists and Multinational Oil Companies operating in the region as well as the Federal Government. The struggle which started as a peaceful protest metamorphosed into armed conflict after the killing of a renowned activist and playwright in the region, Ken Sara-Wiwa and eight other Ogoni men. The new wave of protests after this has included the abduction of foreign oil workers, bombing of oil installations and destruction of lives and property.

A new wave of protests characterised by militancy began in 2003. Violence during this period grew out of the political campaigns in 2003. As they competed for office, politicians in Rivers State manipulated the Niger Delta Vigilantes (NDV), led by Ateke Tom, and the Niger Delta People's Volunteer Force (NDPVF), led by Alhaji Asari Dokubo, and used these groups to advance their aspirations, often rewarding gang members for acts of political violence and intimidation against their opponents (Bekoe

2005, cited in Ajodo-Adebajo 2017). This eventually witnessed the emergence of other militant groups, such as the Movement for the Emancipation of the Niger Delta (MEND), and the Niger Delta Liberation Front (NDLF) which unleashed mayhem on the region. This introduced militancy into the region which was characterised by armed attacks, bombing of oil installations and hostage taking, particularly of foreign oil workers – thereby ushering in a Hobbesian Niger Delta (Ibeanu 2006:9, cited in Ajodo-Adebajo). For several years, the region was characterised by insecurity; and at the height of the crisis, the situation was dreaded by Nigerian citizens and foreigners alike. As a result, many people fled their communities and many foreign businesses were relocated to their home countries.

To address the state of insecurity in the region, the Federal Government in 2009 proposed an amnesty programme which witnessed a large number of militants surrendering their arms in return for training by the government. Under the programme, many repentant militants were trained within and outside the country and during the period, relative peace returned to the region. However, this has been short-lived as there has been the emergence of new militant groups such as the Niger Delta Avengers (NDA), the Red Egbesu Water Lions, Joint Niger Delta Liberation Force (JNDLF), Niger Delta Red Squad (NDRS) and the Adaka Boro Avengers in 2016. These new groups have continued from where the former militant groups left off with renewed bombing of oil installations and abduction of oil workers. Several lives have been lost including those of militants and security operatives, and insecurity has become the order of the day once again in the Niger Delta (Ajodo-Adebajo 2017).

Besides the problems of militancy, youth restiveness, environmental pollution and poverty associated with the Niger Delta as a result of government's unwillingness to develop the region properly, there is, also, the huge case of oil theft and bunkering perpetrated by state apparatus and corrupt government officials. Giving 13% of the oil proceeds back to the states in the Niger Delta region is a natural right of the indigenes of the Niger Delta, neither a gift nor compensation.

The Idea of Extended Natural Rights in Complementary Reflection Philosophy and the 13% Derivation Revenue to Niger Delta States of Nigeria

The idea of transcendent complementary unity of consciousness implies that all human beings are beneficiaries of all forms of goodness we find in the world irrespective of their origin since they constitute an integral part of our being. Every human being benefits of the immense grandeur that sustains our being. We reciprocally share all missing links of reality. In as much as we are integral parts of the totality of being, complementary consciousness considers it a natural right to benefit from one another since all autonomies gain legitimacy from co-determination (Asouzu, 2004:479). All forms of personal ownership and entitlements, all forms of claims and rights, have moments of co-ownership and mutual rights, within the realm of transcendent complementary unity of consciousness. Asouzu argues that, there is a form of extended natural rights in our ownership of goods and services (Asouzu, 2004:479).

Conclusion: The Niger Delta and Extended Natural Right

Co-determination and extended natural rights connote extended natural responsibilities. Our extended natural rights and obligations make us mutually co-responsible in our human endeavours, successes and failures. Since complementarism as *modus vivendi* entails relative human relationship, existence as a mutually lived affair, all components of a system are bound to one another in the manner of a transcendent unity of consciousness (Asouzu, 2004:481). In such a mutually lived affair, rights and duty, privileges, and obligations, and responsibility are closely related.

Extended natural responsibilities enable us to understand while oil producing countries are taxed because of environmental pollution. Here one can allude to the polluter pays principle under which an agent responsible for environmental pollution is charged to pay for such pollution (Ugbe, 2003).

Asouzu submits that our mutual dependence is a necessary consequence of our historicity. And so, we owe our relative existence the greatest gratitude since it is as missing links of reality and in the combination of all possible missing links that are our relative existence is at all thinkable and liveable (Asouzu, 2004: 481).

A transcendent complementary unity of consciousness was implicit in Whitehead who saw reality as a process. He conceived reality in terms of connection and thus was able to appropriate being in terms of interconnectedness of entities in the reality of becoming. Even before him, the great thinker of Konigsberg (Kant) sought for complementary thinking both in the theory of knowledge and in practical philosophy. In the sphere of epistemology, Kant mediated or rather sought a complementation of rationalism and empiricism in the synthetic *a priori*. Driven by this selfsame transcendent complementary unity of consciousness, he considered right as the comprehension of conditions under which the voluntary actions of any one person can be harmonized in reality with the voluntary actions of every other person, according to a universal law of freedom (Kant, *Metaphysics of Morals*). For Kant, there is only innate right: the birth right of freedom.

The recognition of and protection of human rights and fundamental freedoms of individuals and groups is a positive canon of harmonious co-existence of peoples. And cases of unlawful infringement of an encroachment into rights and freedoms of others are deviants from truth and authenticity criterion. Truth and authenticity criterion entails that no unit is an absolute. It decries all forms of exclusiveness. Any acts that negate the fundamental rights and freedoms of individuals and people stem from same forces that have always held our being back in our attempt to excel and regain true authenticity. In all spheres of the globe these rights and freedoms are still being negated, but the mass media, fed by ideological propaganda of those who are deciding the destiny of the world and become world “pontiffs” in democratic cloaks, only announce human rights violations in the East and the South of the world.

Beyond, over and above pessimistic manoeuvres, complementary reflection can be seen as a philosophy of peace. When the voluntary actions of any one person can be harmonized in reality with the voluntary actions of every other person, when the voluntary actions of one nation can be harmonized in reality with the voluntary actions of every other nation, the consequence will be the realization of the joy of being.

This article relied on the complementary reflection philosophy and the natural law theory and argued that the 13% derivation revenue allocation to the Niger Delta is not only an extension of distributive justice, but, fundamentally, a human right. In

the complementary reflection philosophy, this version of human right was described as extended natural right. Co-determination and extended natural rights connote extended natural responsibilities. Our extended natural rights and obligations make us mutually co-responsible in our human endeavours, successes and failures. Now that we have seen the derived allocation as an extended human right, extended natural responsibilities by the recipients should automatically become obligatory on the part of the Niger Delta Governors.

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