

Legal Issues in Nigerian Democracy: Perspectives from Thomas Aquinas' Natural Law Theory

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Abstract

Considering the flagrant abuse and negligence of the laws of the Nigerian state, it has become pertinent to interrogate the correlation between natural law theory, civil law and the dividends of good governance and democracy. Thus, this paper explores Thomas Aquinas' natural law theory as a model for an effective civil law. His theory posits that humans possess an innate understanding of moral principles that are based on natural law, which is universal and accessible to all people. These principles are derived from reason and can be applied to a wide range of situations. Nature is guided by rational principles and by man's rationality, he is able to participate and derive his guiding principles from nature. But what then is law? What is natural law? In what ways does it differ or is similar to civil law? Of what significance is Thomas Aquinas' natural law theory to good governance and Nigeria's democracy? The philosophical method of analysis is used in this paper for a proper breakdown of Thomas Aquinas' Natural Law Theory. The application of Thomas Aquinas' Natural Law Theory to Nigeria's legal framework would ensure that laws made are in tandem with the dictates of informed reason. By extension, adherence to such laws would promote good governance and produce the needed dividends of democracy in Nigeria. The paper also sheds light on the practical challenges that must be overcome to achieve this goal.

Introduction

According to Preece et al. (1984) "Man, by his faculties of reason and will, has insight into "goodness" and "badness" and can develop in either direction, but he ought to devote his powers to developing according to a

natural morality.¹" The order of the precepts of the natural law is the order of our natural inclinations. For there is in man, a primary and natural inclination to good, which he has in common with all things, in as much as everything desires the preservation of its own being (*esse*) according to its nature. Through this inclination, the natural law pertains to everything that makes for the preservation of human life and all that impedes its extinction. There is in man, a second inclination to more specific ends according to the nature he has in common with other animals. According to this inclination, those things are said to be of Natural Law, "that nature has taught all animals"- instincts such as the union of husband and wife, the education of children, and so forth. Third, there is in man, a certain inclination to good according to his rational nature, and this is proper to man alone: thus, man has a natural inclination to know the truth about God and to live in a society. And in respect to this, there come under the natural law all actions pertaining to such inclinations: notably that a man should avoid ignorance, that he must not offend those with whom he deals, and all other actions of this kind.

Following from what is considered above, it is generally observed that in the recent years of our democratic experience, our country Nigeria had witnessed an upsurge of ethnic disturbances, tribal wars and religious bigotry. This is occasioned by the emergence of divergent laws whose foundations seem different from the natural law as heaven is to the earth. The problem here is not that there are many laws but that these divergent laws are inconsistent with the 1999 constitution of the Federal Republic of Nigeria.

The example that readily calls to mind immediately is the Sharia Legal code. The implications of the law mentioned above is that certain

¹ Warren E. Preece, *Encyclopaedia Britannica*, Vol. 12, (USA: Encyclopaedia Britannica inc., 1984), 863.

practices which go against the constitution of Nigeria began to emerge. For instance, the Sharia legal code prescribes amputation of hands and stoning to death. It is however of no doubt that acts and omissions are bound to arise from such interactions which may result into unforeseen damages, especially when negligence is involved, the victims in this sharia law are not given opportunity to defend themselves through the commonly accepted medium.

This paper focuses on examining Thomas Aquinas' theory of natural law, what it means for him and how our laws or constitution as a nation need to fully be in tune with the natural law in order to ascertain a better legislature. The questions that one asks are as follows; if the content of the natural law theorists that the natural law is based on human nature and that any law that is inconsistent with it is not a law but a pervasion of law is anything to hold by, then why should the Sharia Law posit such inhuman punishments? If these divergent laws are consistent with the natural law, of what purpose are they since there existed already a constitution in Nigeria which respects the rights of the people? Why the duplication of laws? This paper therefore, seeks to find solutions to the problems raised above. In subsequent sections, an attempt will be made to resolve these controversies in the light of the Thomistic concept of natural law.

Definition of Terms

Law

Etymologically, law (lex) is from the Latin word "ligare" meaning to bind. Hence, a law is defined as "a rule and measure of acts, whereby man is induced to act or is restrained from acting."² A Law has been identified

² Samuel E. Stumpf, *Philosophy: History and Problems*, (New York: McGraw-hill Inc., 1954), 804.

as a custom or practice recognized as binding by a community, especially as a result of having been so decreed by the governing authority.³ This implies that any rule that would qualify as a law must be accepted as binding by the community or group of people for which it is made. Equally, the law must be decreed by an authority recognized by the group or community. John Finnis views a law as: "Rule made in accordance with regulative legal rules, by an effective authority for a complete community..."⁴ He further states that "it is an assembly of rules and institutions being directed to reasonably minimize arbitrariness and maintenance of quality of reciprocity between the subjects of the law both among themselves and in their relations with the lawful authorities."⁵ This simply means that a law must be made by an effective authority legally constituted as an institution and the precepts of a law serves the purpose of directing the affairs of the community for which it is made.

Customary Law

Customary Law is the body of rules which are recognized and accepted as obligatory by the members of a community. The expression 'customary law' in Nigeria includes the Moslem or Islamic Law which applies to the Northern states of Nigeria. The Sharia Legal code which is the Islamic Legal code operating in some Northern States of Nigeria is a customary law because it springs from the customs of the northern people and is acceptable there as rules guiding their way of life. Disputes on a great number of local issues are also settled on the basis of customs generally accepted by the community. However, such customary laws must not be repugnant to the natural law.

³. D. Bolander, *Webster Dictionary of English Language*, (New York: Lexicon International Publishers, 1995).

⁴. John Finnis, *Natural Law and Natural Rights*, (New York: Oxford Press, 1980), 276.

⁵. Finnis, *Natural Law*, 276.

The Igbo have no clear distinction between law and morality as is obtainable in the Western world. Thus, in Igbo traditional setting, "law has no formal or human promulgation, in so far as they are customs; "Omenani" as we shall consider later."⁶ For the Igbo, a crime is an act committed against customs and traditions (Ome-nani, or Ome n'ala). It is better understood as "Imeru-ala', 'nso-ala'... as against 'omenala' (as it is done in the 'land'..) land here involves not just the community of the living, but also of the living-dead and the yet unborn."⁷ The Igbo have no written code of law as every other customary Law. "All they have in terms of customs, 'omenala' is preserved in their myths, proverbs, symbols, folklores and wise sayings."⁸ These are orally transmitted from one generation to another.

The Igbo have no legislative arm of government that enact laws. The process of interpreting laws in Igbo tradition lies on the village elder (Okpala obodo). He serves therefore as a judiciary. The functions of ensuring the observance of these laws are done by the masquerades, age grades and women folk (umuada). They serve as the executive arm of government. For the Igbo, group action (Igwe-bu-ike) does the function which the police do in the Western legal system. In conclusion, the Igbo conception of Law covers not only what disrupts man's natural and physical existence but also what affects the spiritual realm."⁹

Natural Law

According to the New York Public library desk reference book, "Natural Law is the theory that there is a higher law than the man-made laws put

⁶ J.C. Ekei, *Justice in Communalism: A Foundation of Ethics in African Philosophy*, (Lagos: Realm Communications, 2001), 45.

⁷ F. A. Arinze, *Sacrifice in Igbo Religion*, quoted in J.C. Ekei, *Justice in Communalism*, 45.

⁸ Ekei, *Justice in Communalism*, 46.

⁹ Ekei, *Justice in Communalism*, 47

forth by specific governments. This law is universal, unchanging and a fundamental part of human nature.”¹⁰ Furthermore, the compact edition of the Oxford dictionary clearly views the natural legal theory as: "Action arising from or based on natural instincts without spiritual guidance, a view of the world and of man's relation to it, in which only the operation of natural as opposed to supernatural or spiritual laws and force is admitted or assumed.”¹¹ Natural law therefore, is an abstraction from the functioning of nature. It postulates absolute principles that are universal, unchangeable, transcending time, space and dynamics of social change. It establishes itself as a law higher than positive law and possessed with invalidating power to "strike down" any positive law found incompatible with it. Natural law according to Godlex Ezeani should serve as a model for all laws and quintessence of moral conducts.¹²

Civil Law

Civil law, in the strict sense, means "the body of rules posited by the person who is in charge of the community, to be obeyed by the people in a given society.”¹³ In other words, it is a body of legal principles which concerns the rights and duties of individuals in a given political society.¹⁴ Examining critically the above definitions, we noticed that civil law is the law made by the civil authority or those in the political power in a given society, to be obeyed and followed strictly by the individuals in order to ensure discipline. The purpose of making such a law in the society is to make every person to be good morally and for social control and harmony unlike the natural law which has its dictates drawn from the

¹⁰ K. Anderson, et al., (eds), New York Public Library Desk (Reference Book), (New York: Stoneson Press, 1993), 193.

¹¹ Compact Edition of Oxford English Dictionary, quoted in Godalex Ezeani, *Philosophy at a Glance*, (Onitsha: Millfield Publishers Ltd., 1998), 68.

¹² Ezeani, *Philosophy at a Glance*, 68.

¹³ Colin F. Padfield, *Law Made Simple*, (London: W.H. Allen, 1970), 4.

¹⁴ Padfield, *Law Made Simple*, 5.

grand norm, which is the natural law.

Again, the civil law as a body of legal principles concerns the rights and duties of the individuals in the state. This implies that the civil law, in its most primary aim, ensures that the rights and duties of the individuals are protected and respected in the society. This is to create a good political society characterized by peaceful co-existence, freedom, happiness, and good governance.

Thomas Aquinas and Natural Law

According to Aquinas, natural law is the participation of the rational creature in the eternal law of God. He believed that natural law is accessible to all people, regardless of their religious beliefs, and that it is the foundation of all human law. Aquinas argued that human law should be based on natural law, and that any law that violates natural law is unjust. Aquinas believes that natural law is derived from two sources: reason and revelation. Reason allows us to discover the basic principles of natural law, while revelation provides us with additional insights into God's plan for humanity.¹⁵ However, Aquinas believed that reason is sufficient to discover the basic principles of natural law and that revelation is not necessary for this purpose.

Aquinas's concept of natural law was influenced by the works of Aristotle, particularly his theory of causality. Aquinas believes that everything in the universe has a purpose, and that this purpose can be discovered through reason. He applied this idea to human behaviour, arguing that human beings have a natural inclination to act in certain

¹⁵. Adam Augustyn, "Natural Law", Encyclopaedia Britannica, July 11, 2023, <https://www.britannica.com/topic/natural-law/Natural-law-in-the-Enlightenment-and-the-modern-era>

ways that are consistent with their rational nature.¹⁶ He believes that the basic principles of natural law are self-evident and can be discovered through reason. He identified four basic precepts of natural law: the preservation of life, the pursuit of knowledge, the maintenance of social order, and the worship of God. He believed that these precepts are inherent in human nature and are necessary for the flourishing of human beings.¹⁷

Natural law theories understand law as a remedy against the great evils of anarchy and lawlessness. The natural law consists of one supreme and universal principle from which all our natural moral obligations or duties are derived. Aristotle is often said to be the father of natural law, but whether Aquinas correctly read Aristotle is in dispute. According to some scholars, Aquinas conflates natural law and natural right, the latter of which Aristotle posits in Book V of the *Nicomachean Ethics*.¹⁸

Aquinas described four kinds of law: eternal law, divine law, natural law, and human-made laws. Eternal law was God's perfect plan that determined the way things such as animals and planets behave, Divine laws were revealed through scripture and church teachings. Natural laws were based on reason and could be discovered by humans through their ability to reason. He sees human laws as laws devised by human reason and adapted to particular geographical, historical and social circumstances.¹⁹

Characteristics of Aquinas' Natural Law Theory

Aquinas also believed that natural law is based on the idea of human

^{16.} Thomas Aquinas, *Summa Theologica*, Vol. II, (New York: Image Books, 1969), 99.

^{17.} Aquinas, *Summa Theologica*, 99

^{18.} Joseph Omoregbe, *An Introduction to Philosophical Jurisprudence*, (Lagos: Joja Press, 1997), 123.

^{19.} Aquinas, *Summa Theologica* I-II, q91, a2.

nature. He argued that human nature is rational and that human beings have a natural inclination to act in ways that are consistent with their rational nature. Therefore, natural law is based on the idea of human flourishing, or the idea that human beings should live according to their nature in order to achieve their highest potential.²⁰ Aquinas identified several characteristics of natural law. First, he identifies natural law as a rational participation in the eternal law by rational creatures. This implies that by virtue of rationality, all men are capable of accessing the natural law. In other words, natural law is universal. Second, he asserts that natural law is immutable and does not change over time. Third, he believes that natural law is objective and can be discovered through reason. Fourth, he holds that natural law is binding on all people, including rulers and lawmakers.²¹

Another important characteristic of natural law, according to Aquinas, is its teleological nature. Teleology is the study of purpose or ends. Aquinas believes that everything in the universe has a purpose, and that this purpose can be discovered through reason.²² (Stumpf, 1994). He applied this idea to human behavior, arguing that human beings have a natural inclination to act in certain ways that are consistent with their rational nature. Therefore, the purpose of natural law is to guide human beings towards their ultimate end, which is to live according to their nature and achieve their highest potential.

Foundation of Natural Law

The foundation of natural law, according to Aquinas, is God. Natural law is grounded in the eternal law of God, which is the divine plan for the universe. The eternal law is the ultimate source of all truth and goodness,

²⁰ Stumpf, *Philosophy*, 200.

²¹ Stumpf, *Philosophy*, 200.

²² Stumpf, *Philosophy*, 200.

and natural law is a participation in this divine law.²³ He believes that God created the universe according to a rational plan, and that this plan is reflected in the natural order of things. He argues that human beings, as rational creatures, have the ability to discover this order and to understand the basic principles of natural law.²⁴ Aquinas believes that the basic principles of natural law are self-evident and can be discovered through reason. He argued that reason is a gift from God and that it is through reason that we are able to understand the natural order of things. He also believes that revelation provides additional insights into God's plan for humanity and that revelation can help us to better understand natural law.²⁵

His concept of natural law is grounded in the idea that there is an objective moral order inherent in the natural world. This moral order is grounded in the eternal law of God, and it is accessible to all people through reason. Natural law is the foundation of all human law and provides a basis for ethical decision-making.

Problems of Natural Law

Aquinas's theory of natural law is based on the idea that there is a natural moral law that is accessible to human reason and is rooted in the very nature of things. According to Aquinas, the natural law is a set of principles that govern human behavior and guide human action toward the ultimate end of human happiness. However, despite the many strengths of Aquinas's theory, there are also several significant problems associated with the natural law.

²³ Aquinas, *Summa Theologica*, I-II, q90, a3.

²⁴ I Aquinas, *Summa Theologica*, I-II, q90, a3

²⁵ P.J. Green, *A Tour of the Summa Theologica of St. Thomas Aquinas*, (Rockford: Tan Books, 1978), 167.

Difficulty in Discerning the Natural Law

One of the main problems with Aquinas's theory of natural law is the difficulty in discerning what the natural law actually is. Aquinas himself acknowledged that the natural law is not always clear or easy to understand. It can be difficult to determine which principles are truly part of the natural law and which are merely personal opinions or cultural norms.²⁶

Another problem with Aquinas's theory of natural law is the confusion over the relationship between natural law and divine law. Some critics argue that Aquinas places too much emphasis on natural law and not enough on divine law. They argue that the natural law can never be a substitute for divine law, and that any attempt to do so is misguided.²⁷

Another challenge is that of determining the ultimate end of human happiness. Aquinas argues that the ultimate end of human happiness is the purpose of natural law. However, there is significant debate over what exactly constitutes the ultimate end of human happiness. Some argue that it is a subjective concept that varies from person to person, while others argue that it is an objective reality that can be determined through reason.²⁸

The Problem of Conflicting Natural Laws

Another problem with Aquinas's theory of natural law is the problem of conflicting natural laws. In some cases, different natural laws may appear to conflict with each other. For example, the natural law may dictate that individuals have a right to life, but it may also dictate that

^{26.} Immanuel Kant, *Groundwork of the Metaphysics of Morals*, Edited by Mary Gregor, (Cambridge: Cambridge University Press, 2012).

^{27.} P.J. Green, *A Tour of the Summa Theologica of Thomas Aquinas*, 186.

^{28.} Green, *A Tour of the Summa Theologica of Thomas Aquinas*, 186

individuals have a right to defend themselves against aggression. In such cases, it can be difficult to determine which natural law should take precedence.²⁹ Should one under armed attack kill the attacker in self-defence, thereby denying the attacker his right to life? Or all the attacker to harm or kill him thereby losing his own life?

There is also the difficulty in applying natural law to contemporary moral issues. Finally, one of the biggest challenges facing the theory of natural law is the difficulty in applying it to contemporary moral issues. The natural law was developed in a very different historical and cultural context, and it may not always be relevant or applicable to modern-day moral debates. For example, the natural law may not provide clear guidance on issues such as abortion, euthanasia, or same-sex marriage.³⁰

Significance of St. Thomas Aquinas' Natural Law Theory to the Nigerian Legal System

The significance of the natural law lies in the fact the dictates of the civil law are derived from the natural law. For instance, we mentioned the American legal system, where some of the civil law documents are derived from the natural law theory.³¹ The Nigerian documents such as the Nigerian Declaration of Independence (1960). The American documents such as the American Declaration of Independence (1776), The United States Constitutions (1787) and so on were derived from natural rights. These natural law documents set limits to the powers that a state can exercise over the individual citizens. But the question is - why was it thought necessary to restrict the power of the state over the individual citizens? This is because, "there is a law of nature which

^{29.} Green, *A Tour of the Summa Theologica of Thomas Aquinas*, 186

^{30.} Green, *A Tour of the Summa Theologica of Thomas Aquinas*, 186

^{31.} Raphael, *Human Rights*, 58.

existed prior to the creation, or formation of any political society.”³² This law confers on every individual person certain (natural) rights, which must be respected. The state cannot legitimately deprive the individuals of these rights. For, to do so would amount to a violation of natural law; this obliges both the state and individuals within it. Thus, the state is obliged to obey the natural law by respecting the natural rights conferred on every individual by this law and the state must be subject to law as well.

Implication of St. Thomas Aquinas' Concept of Natural Law for Nigerian Democracy

Thomas Aquinas' concept of natural law is rooted in the idea that there is a higher law that is based on reason and natural principles, which transcends positive laws enacted by human beings. According to Aquinas, this natural law is universal and applies to all human beings, regardless of their culture, religion, or nationality. Natural law is seen as a moral guide for individuals and societies, and it is based on the idea that human beings have certain innate moral principles that should guide their behaviour.

In the context of Nigerian democracy, the implications of Aquinas' concept of natural law are significant. Nigeria is a country with a diverse population, consisting of different ethnic groups, religions, and cultures. The idea of natural law can provide a unifying moral framework that transcends these differences and provides a shared set of values that can guide the actions of individuals and the government.

One implication of natural law for Nigerian democracy is the idea that there are certain basic human rights that should be respected and

³² Federal Republic of Nigeria, *The 1999 Constitution of the Federal Republic of Nigeria*, as Amended, (Abuja: Spokane Comm, 2000), 33.

protected by the government. These rights include the right to life, liberty, and property, as well as the right to freedom of speech, religion, and association. The government has a duty to protect these rights and ensure that they are not violated by any individual or group.

Another implication of natural law for Nigerian democracy is the idea that the government has a responsibility to promote the common good of society. This means that the government should act in a way that benefits the entire society, rather than just a particular group or individual. This includes providing basic services such as education, healthcare, and infrastructure, as well as ensuring that there is a fair and just legal system in place.

In practice, this means that the Nigerian government should prioritize policies and programs that promote education, healthcare, and economic development, as well as protecting the rights of marginalized groups such as women, minorities, and the poor. Additionally, the government should ensure that the legal system is fair, transparent, and impartial, with clear rules and procedures that are consistently applied.

Another implication of Aquinas' concept of natural law for Nigerian democracy is the idea that the law should reflect the values and beliefs of the society it governs. This means that the law should be culturally sensitive and should take into account the unique history, traditions, and values of the Nigerian people.

Finally, Aquinas' concept of natural law emphasizes the importance of respecting the dignity and autonomy of individuals. This means that the law should protect individual freedoms, such as freedom of speech, association, and religion, while also balancing these freedoms with the common good and the needs of society as a whole. Natural law can also

provide a basis for ethical leadership in Nigerian democracy. Leaders should be guided by the principles of natural law in their decision-making, rather than simply seeking to gain power or advance their own interests. This means that leaders should act with integrity, honesty, and a commitment to the common good, rather than engaging in corrupt or unethical practices.

Overall, the implications of Aquinas' concept of natural law for Nigerian democracy are significant, as they emphasize the importance of protecting human rights, promoting social justice, and creating an environment in which all individuals can flourish and contribute to society.

Shari'a Law Versus Natural Law

Shari'a is the religious laws that govern the conduct of adherents of Islam towards a moral and spiritual life. It is derived from Arabic word meaning a drinking water or a path leading to a watering hole.³³ Shari'a is regarded not only as the fountain of earthly life but also the fountain of eternal life.³⁴ Sharia is derived from two main sources: the Quran, which is considered the direct word of God, and hadith—thousands of sayings and practices attributed to the Prophet Mohammed that collectively form the Sunna.³⁵ Shari'a is believed to be the immutable laws of Allah which human reason is more or less unable to grasp. Some Islamicists hold that

³³ C.O. Ubaka, *Sharia in Nigeria: its Implications for Non-Muslims*, (Engugu: Snaap Press Ltd, 2000), 11, cited in K.E. Ikenga and Oraegbunam, "Sharia, Criminal Law, Islam and Democracy in Nigeria Today", *OGIRISI: a New Journal of African Studies* 8, (2011): 184.

³⁴ Ikenga and Oraegbunam, "Shari'a, Criminal Law", 184.

³⁵ Kali Robinson, Understanding Shari'a: The Intersection Between Sharia and the Law, Council on Foreign Relations, December 21, 2021, <https://www.cfr.org/background/understanding-sharia-intersection-islam-and-law#:~:text=In%20Islam%2C%20it%20refers%20to,that%20collectively%20form%20the%20Sunna.>

human beings have no authority to speak on behalf of the divine without recourse to the authority of the scripture. For, in fact, "Reason does not assume any ontological authority akin to that of scripture that would justify using it as a basis for finding, determining and constructing obligations that emanate from the divine."³⁶ Going further, Anver M. Emon writes that:

The dominant Positivist thesis, as expressed in premodern *usul al-fiqh* or legal theory, holds that where there is no scripture on a matter, one is left in a state of legal suspension (*tawaqquf*); there is no epistemically coherent way to determine the divine law on that matter, and consequently no one is in a sufficient epistemic position to attribute to God a ruling of any normative force. Fundamentally, this position enshrines within Islamic law a strict scriptural positivism. Jurists argued that all determinations of God's law must find expression, either directly or indirectly, from scripture. Extrascriptural indices, whether in the form of rational proofs or references to nature, do not provide a proper basis or foundation for asserting the divine law.³⁷

The interpretations and applications of Shari'a law have remained largely cumbersome and rigid to the extent that some Muslims and non-muslims worry about its non-alignment with natural law and some extant laws of the country.

One of the basic tenets of law, and by extension natural law, is seeking the common good. Punishment for Shari'a offences such as lapidation, stoning to death, crucifixion and so on, to say the least, does more harm than good. Such capital punishment, oftentimes associated with private moral conduct such as homosexuality is among what Wolfenden Committee in America in 1957 argued that it would do more harm than

³⁶ Anver M. Emon, "Natural Law and Natural Rights in Islamic Law", *Journal of Law and Religion* 20, no.2(2005): 351. DOI: <https://doi.org/10.2307/4144668>

³⁷ Emon, "Natural Law and Natural Rights", 351.

good to the society.³⁸ In this regard, Lloyd (1991:60) argues thus:

There may be fields of human activity where the law deliberately prefers to abstain from supporting the moral rule because it is felt that the machinery is too cumbersome to engage upon the particular task and that more social evil may be created than prevented by its intervention.³⁹

Natural law precepts advance the preservation of life wherefore self-defence is not a sufficient ground for killing. This primary thesis of natural law cannot be said to be duly recognized by Shari'a law. Instead of pursuing it to a more deleterious end, some moral issues should be "left to the rumination of individual consciences."⁴⁰

According to Mustapha Tajdin:

One of the basic tenets of natural law theory is that any legal ruling is binding only when it protects human interests. Utilities are essentially communal and occasionally individual. This is emphasized in order to prevent the crafting of laws for the purpose of serving some individual or group interests at the expense of common goods.⁴¹

Both Shari'a law and natural law aim at the protection of the interests of the people. This interest could be public or private interests. While both converge in this regard, it remains questionable to what extent Shari'a law protects individual interest. Human interest is classified into three main categories: the necessities (?arūriyyāt), the complementary (?ājiyyāt), and the embellishments (ta?sīniyyāt). The necessities are

^{38.} Ikenga and Oraegbunam, "Shari'a, Criminal Law", 196.

^{39.} D. Lloyd, *The Idea of Law* cited in Ikenga and Oraegbunam, Shari'a, Criminal Law, 196.

^{40.} Ikenga and Oraegbunam, "Shari'a, Criminal Law", 195.

^{41.} Mustapha Tajdin, Natural Law and Shari'a Law, A Quest for the Universal in the Particular, *International Journal of Business, Economics and Law* 14, Issue 5, (December, 2017), 7.

five: faith, life, procreation, property, and intellect.⁴² The Shari'a law in practice in Nigeria has continued to trample on the economic interest of the people as well as led to the destruction of properties worth millions of Naira. On different occasions, people's merchandise (alcoholic drinks), warehouses and so on have been destroyed under the cover of Shari'a law. This is not only a violation of the natural law which seeks the common good and the promotion of human interest but also an economic crime and sabotage.

Writing on economic effects of Shari'a Criminal Law and democracy in Nigeria, Ikenga Oraegbunam asserts this:

Yet it has affected negatively the economic life of the relevant states and that of the entire nation. For one thing, Sharia is not in sympathy with modern economic revolution modeled, as it were, on capitalism and profit motif. The banking system is directly affected as its inner logic of interest accumulation is outlawed as usury by strict Sharia. Moreover, dealers on those commodities like alcohol and certain meats, for instance, which are criminalized by Sharia would be forced to relocate with the attendant economic hazards. This Sharia practice triggers off a debate on whether the value added tax (VAT) tagged on those commodities sold in non-Sharia states will ever be used on the development of the Sharia-implementing states. Certainty, the application of Sharia criminal justice may not create the enabling environment that would attract foreign investment needed today for development in this era of globalization. The result is that the economic life of the Sharia states and its consequences for the nation would leave much to be desired.⁴³

⁴² Abū Isḥāq Al-Shāḥibī, *Al-Muāfaqāt fī Uṣūl Al-Sharīʿa*. ed. Abdallah Darraz (Cairo: Al-Maktaba Al-tijāriyya AlKubra), 1: 29, 38, cited in Mustapha Tajdin, *Natural Law and Shari'a Law*, 7.

⁴³ Ikenga and Oraegbunam, "Shari'a Criminal Law", 196.

Shari'a law, despite its successes, has negative implications for the people (citizens), Nigeria's extant laws and the Nigerian state. "Perhaps what the criminal aspect of Sharia has been able to entrench in the minds of citizens through its stringent penalties is fear and deterrence, and invariably pseudo-security of life and property."⁴⁴

Conclusion

Thomas Aquinas presented natural law as the rational participation in the eternal law of God. This law is discernible, accessible and universal to all human beings, knowable through reason and revelation. In as much as the natural law theory is appealing and serves as the basis of positive (civil) laws, it has some shortcomings. In other words, while Aquinas's theory of natural law is a significant contribution to the field of moral philosophy, it is not without its problems. The difficulty in discerning the natural law, the confusion over the relationship between natural law and divine law, the challenge of determining the ultimate end of human happiness, the problem of conflicting natural laws, and the difficulty in applying natural law to contemporary moral issues are all significant challenges that must be addressed in any discussion of the natural law.

However, the natural law as basis for civil law is paramount in the promotion of fundamental human rights, the common good of the society, the values and ideals of the society as well as the dignity and autonomy of individuals. The implications of Aquinas' concept of natural law for Nigerian democracy are significant, as they emphasize the importance of protecting human rights, promoting social justice, and creating an environment in which all individuals can flourish and contribute to society. This can only be achieved if all hands are on deck as regards obedience to the laws of the state which are derivatives of the

⁴⁴ Ikenga and Oraegbunam, "Shari'a Criminal Law", 195-196.

natural law.

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