

THE NIGERIAN LEGAL SYSTEM AND ITS NEED FOR REVIEW IN LIGHT OF THE NATURAL LAW THEORY: AN APPRAISAL

Stephen Chibuikem Onyedika
Department of Philosophy,
Nnamdi Azikiwe University, Awka, Anambra State, Nigeria.

ABSTRACT

The clamour for a more functional justice delivery system in Nigeria has been among one of the concerns of Nigerians in what seems like a failed system in the fourth Republic. To be candid, the judicial system in Nigeria has been bugged with corruption and inconsistencies lately that the people have lost faith in it. This paper scrutinizes the current legal framework in the country using the principles of Natural law drawing from Thomas Aquinas and some other proponents of the theory. Methodologically this paper is critical and phenomenological in that it assesses the Nigerian situation from its particular historico-cultural milieu with the view of ascertaining the main causes of the problem and why the principles of the natural law serves as a most plausible framework for restructuring the system for effective justice delivery. This paper argues that the legal framework adopted from the British common law had down the years streamlined legal practices and decisions to procedural scrutiny more than it provides room for moral scrutiny, and the in-dept normative assessments which was typical of the justice delivery system in the pre-colonial era. Thus, the ‘legal and judicial processes’ become strategically manipulated to favour the more privileged elite and political class to the detriment of the marginalized and the poor, whose right to justice are most times denied. It is the position of this paper, therefore that the Nigerian legal system should be restructured to accommodate the natural law principles which do not just serve as moral guide to the judicial process, but also censors the integrity of judicial officers during the course of justice delivery.

Keywords: Law, Legal, Justice, System, Positive and Natural.

INTRODUCTION

The statement by Bob Marley, “You will never find justice” in a world where criminals make the rules” would have been dismissed as mere lyrics if some lawless nations and cultures of tyrannical regimes have not been spotted round the world in time. In the most appropriate ways, the law or a country’s legal system should facilitate social order, protect the rights of all citizens in fairness and with respect to the equality of persons and ensure social stability. But when the legal apparatuses, structures and institutions of Government get into the hands of the wrong persons (tyrants, corrupt leader and shrewd political cabals), they become tools for victimization, domination and oppression (Marx, 1867). While some nations like the United States of America and the more advanced democratic nations are applauded for their respect to the “rule of law”, there are other countries where the legal institutions are characterized with unpopular ideologies, corruption and inconsistencies.

In Nigeria, what began as a legal legacy from the erstwhile British colonial government has turned to be a paradox in contemporary times, given the cases of corruption and malpractices that have been recorded within the country's judicial system. While one does not entirely deny some notable Nigerian judicial officials as men of integrity, with admirable legal antecedents, rulings and court proceedings to their favour, the fact that in recent times some judicial proceedings have been smeared with stains of corruption and unprofessional conduct. The election tribunal that ruled the presidential general elections (2023) between Mr. Peter Obi and Chief Bola Tinubu still keeps the world upset as to how justice can be miscarried even in the face of evidence and public assessment. The continued detaining of Mazi Nnamdi Kanu also draws questions on the limits of judicial power and authority over politically-related issues, and towards the inadequate influence that the Executive arm of Government, or dominant political class wields over the judiciary in Nigeria. It is due to this scenario that this paper carries out a philosophical assessment of the Nigerian Legal system in light of the Natural Law tradition. One important tenet of the Natural law that singles it out from other legal schools of thought like legal positivism and historicism, is the emphasis it lays not just on the moral and natural foundations of positive law, but also on the moral rectitude of judicial officials. Obviously, the fact that the Nigerian judicial and legal system is riddled with corruption and injustice has a lot to do with the right foundations upon which a just legal system should be built, and also the training of members of the Jury.

AQUINAS AND THE NATURAL LAW THEORY

Within the context of this inquiry, it is argued that the gross abuses observed in judicial proceedings in Nigeria alongside a systemic culture of corruption that now characterize the Nigerian legal system calls for an overhauling project that would respect principles of morality and the natural law. For Ratzinger Nwobodo (2023), "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." This correlation becomes significant with the adoption of the Aquinas natural law theory model. In agreement with this line of reasoning, Nwobodo acknowledges that, the Aquinas' natural law model can serve as a functional framework for effective civil law in Nigeria. The rationale behind this conviction is that Aquinas' natural law theory maintains that "humans possess an innate understanding of moral principles that are based on natural law, which is accessible to all people" (quoted in Nwobodo, 2023). The universality of the natural law principles with respect to its applications to particular positive laws, irrespective of cultural or other ideological ties is a unique contribution of St. Thomas Aquinas to legal theory to this day. Because they stem from reason and can be applied to a wide range of situations, the natural law principles remain sacrosanct. Another important tenet from the natural law is that its principles are derived from human nature, characterized by reason. As such man has the capacity to articulate the right course of action as a rational being allowing his activities to be guided by rational principles and objective moral ties.

Based on the above line of reasoning therefore, it is necessary to hold along with Nwobodo (2023) that:

The application of Thomas' Aquinas' Natural law Theory to Nigeria's legal framework would ensure that laws are made 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 gap between St. Thomas Aquinas and today spans over seven centuries, and obviously state organization during his time differs significantly from the modern nation-state structures in vogue in contemporary times. The world today is more secularized than what was obtainable in his days when the Church had a lot of influence over state affairs than what we see today. However, Aquinas' thesis on the natural law continues to gain more acknowledgement within the fields of positive law. Contemporary society is characterized by pluralism, cultural and ethnic diversity, religious antagonisms and state sovereignty which limits international censorship of legal practice in particular countries, a situation that has affected the effectiveness of international law to this day. A similar constraint to the application of natural law principles in contemporary times, is the effort by some contemporary legal theorists to dissociate natural law from contemporary positive law especially on the areas where law comes in contact with compelling moral demands. While it is not disputed that the actual practice of judicial bodies should follow articulate legal procedures, there are the more existentially-based issues that require adherence to moral and natural principles that should be addressed with the discretionary capabilities of judicial officials and should not be swayed and manipulated through systemic process and irrational adherence to procedure. This is where the authority of the natural law overrides the usual judicial process in a nation's justice delivery system.

In furtherance, there is the critical factor of "reason" which runs as a principal tenet in Aquinas' Natural law theory. So long as any human venture is concerned, the role of reason cannot be undermined. It is such that in cases where certain divine (Christian) principles may not be agreed upon, the normative and moral authority of reason will always be the standard for pursuing all legal fronts, and this also applies to particularized settings like the customary legal systems in different countries.

Aquinas' account of law depends fundamentally on his conception of human action and the rational inclinations typical of the human person. In the *Summa Theologica*. The allusion to human nature, one finds Aquinas' efforts at describing human nature, the natural law and how man's rational nature is attuned to the principles of the natural law. In his treatment of natural law, Aquinas (1961) makes a connection between law and nature in two ways. Firstly, he says in Question 90 that God instilled [natural law] into man's mind so as to be known by him naturally. Secondly, the characteristic inclination of the human person is to use the light of natural reason, whereby we discern what is good and what is evil. For Aquinas (1961), the natural law is universal, in that it applies to the entire human race, and is in itself the same for all. Following ontologically the constitution of man, every man, because he is a man, is bound

to conform to the universal order willed by the Creator, to live in conformity to his own rational nature, and to be guided by reason. To affirm the emphasis that Aquinas lays on conformity to one's nature through the use of reason, Aquinas makes a case for infants and mentally deranged persons. He holds that infants and insane persons do not have the actual use of their reason and therefore cannot know the law. As such, they cannot be held culpable for failure to comply with the demands of the state laws or any other positive law.

Again, Aquinas (1961) argues that natural law is immutable. It is unchanging and is directed to enabling man attain the end for which he was created. This is where Aquinas links the natural law and the divine law.

One of the most notable improvements on Thomistic natural law theory in contemporary times is that articulated by John Finnis. According to him, in *Aquinas: Moral, Political, and Legal Theory*, there are seven basic human goods that reflect Aquinas' primary precepts. These basic human goods according to Finnis (1998) are: Life, Knowledge, Play, aesthetic experience, sociability, practical reasonableness and religion. Finnis goes on to argue that all these basic human goods like the Aquinas' basic precepts of natural law are essential in establishing human positive laws and the justice system. In critical terms, Finnis does not just outline fundamental social virtues, he sees them essential moral tenets of the natural law that remain pivotal for viable positive laws. Typical also is the acknowledgement that John Finnis makes on the importance of practical reasonableness in legal practice. This according to him plays important role in discerning moral actions and inform legal decisions (Finnis, 1998). His emphasis on practical reasonableness stems from the Aquinas' concept of synderesis which refers to man's innate habit of understanding moral principles. He affirms Aquinas' position on the fact that natural law actually informs the basis for natural rights which are essential for human flourishing.

Another important contribution to the development of Aquinas' thoughts on the Natural law was made by Jean Porter. In his work *Nature as Reason: A Thomistic Theory of the Natural Law*, (2005), Porter provided adequate and detailed understanding of Aquinas' thoughts in order to address the misconceptions and critiques on the Thomistic stance on natural law. One remarkable achievement of Porter is his incorporating contemporary scientific insights into Thomistic natural law theory. In furtherance he defends Aquinas' natural law theory as rooted in a rational understanding of human nature. Jean Porter annexed the Thomistic teleological thesis on human nature with contemporary scientific insights thereby corroborating Thomistic teleology with scientific proof. Finally, Porter appreciates the role of moral virtues in achieving human virtues and so affirms the inevitable role of morality in shaping the course of human laws. Porter's work like that of Gilson are therefore solid improvements on the natural law theory, and their works contributed immensely to revival of the natural law theory in modern intellectual history.

As a philosophical inquiry, it is important to note that the natural law theory as plausible as it appears has not escaped criticisms, especially from the legal positivist, historical, cultural relativism and liberalism. The natural law theory had been brought to notable critique by Hans

Kelsen, H. L. A. Hart, Joseph Raz and John Austin. Generally, for the legal positivists, the law stems from social postulations, or a body of social facts derived from human authority. For these legal theorists, laws are the pronouncements or rules made by the sovereign. These include: monarchs, governments and legislative bodies. They rejected the position that positive law is derived from the divine or natural law as Aquinas and other natural law theorists suggest. They equally reject the Aristotelian-Aquinas' understanding of human nature. If situated within the actual practice of law and the activities of the judiciary in law courts, one sees the defense of laws and the outcome of justice necessarily depending on the legal process and the discrete decisions of the sovereign and its judicial officers rather than on some pre-established, universal and already existing natural and moral principles. In all, the legal positivists separate law from morality against the stand of the natural law theory. For them, as for the historicists, the field of legal practice should be clearly distinguished from the sphere of morality and moral judgement, but on the socio-political exigencies of particular societies and judicial antecedents (some which may not have been attained rightly, but for mere fact that they were the decisions of acknowledged judicial umpires). The law remains human constructs and is subject to change and variation as against the natural law stance that laws should be universal, natural and immutable. Positive law (State laws) in theory and actual practice should not reflect moral principles. For the critics of the natural law, the primary purpose of law is to maintain social order and not the promotion of moral goods (Kelsen, 1967). For Kelsen, as contained in his work, *Pure Theory of Law*, the natural law doctrine remains incompatible to the fundamental principles of legal positivism, and for Hart in *The Concept of law*, "the concept of natural law is ...obscure and contentious" (Hart, 1961). This means that there cannot be a natural cohesion between the demands of positive law and the projections of the natural law theory. The natural law thesis was equally not spared by David Hume. In *A Treatise on Human nature*, Hume (1968) vehemently disagrees with the tenets of natural law for its reliance on reason and Nietzsche (1967) challenges traditional morality and natural law in *The Genealogy of morals*. From the angle of cultural relativism, Alasdair MacIntyre in his work, *After Virtue*, MacIntyre argued against the tenets of universalism in favour of more cultural orientations to the approach of virtue (morality) and legal theory (MacIntyre, 1981). He believes that moral and legal norms evolve from particular sociocultural settings from which a people derive their worldviews, values and meanings. In his contention, "the notion of a natural law grounded in the nature of human beings, is...problematic" (MacIntyre, 1981). This approach goes against the Universalist tenet of Thomistic natural law which maintains that moral law and practical reasonableness is innate to all humans and is universal, and as such should be the basis of human laws. In furtherance, he challenges Aquinas stand that man has the innate capacity through reason to discover natural law principles, and for him, reason is limited and context-dependent. He goes on to reject Aquinas' adoption of Aristotelian teleological understanding of human nature, which he sees as inadequate (MacIntyre, 1990). On his own views, however, MacIntyre advocates the importance of narrative and tradition in shaping moral understanding and furnishing the normative framework of particular societies. He sees Aquinas' synthesis of Aristotelianism and Christianity as not tenable as he projected. Unlike the positivists, however,

MacIntyre does not entirely dissociate morality from law, but sees their annex from more cultural and traditional perspective than the universality that Aquinas gives to it.

Despite the criticisms, however, one notes that no matter their contentions, the legal positivists have not been able to distinctly spell out the differences between moral issues and legal issues, as in most cases, even when the legal process is emphasized more than the moral content of the law, most crimes and offenses remain moral issue. Again, the notion of justice has not been convincingly denied its status as a social virtue, or a moral phenomenon.

THE NIGERIAN LEGAL SYSTEM *VIZ-A-VIZ* THE NATURAL LAW PRINCIPLE

The Nigerian legal system is a complex combination of different legal systems: the English Law, Common Law, Customary Law and Sharia Law. This complexity stems from her unfortunate colonial antecedents, and therefore it would not be out of place to say that the law in Nigeria did not evolve adequately with exception of its customary laws unique to the many cultures and ethnic groups that make up Nigeria. One obviously acknowledges that a huge part of the civil law in Nigeria are copies from the English common laws of Britain. Similarly, the criminal justice system in Nigeria and other statutory codes get their force a constitution that hitherto evolved the constitutions used by the colonial administration before independence. For the fact that the Social Contract that was supposed to have established post-colonial Nigeria was not independent, indigenous and participatory enough, most social systems that evolved from it including the Nigerian legal system are today bugged by complexities too vague to be addressed by mere reform and lip-service legal reforms.

Unfortunately, a tour of the news channels and mass media in and outside the country portray very negative image of the Nigerian legal system. The citizenry are gradually losing faith in the law as a foremost protector of basic human rights and guarantee for justice. With the injustice meted out during the 2023 general elections, alongside the denial of justice to innocent citizens like victims of the End-Sars Protest, the arrest and detention of protesters who participated in the recent End-Bad Governance protest and charged for treason, one wonders the hope of the citizenry if the system continues in like manner without enabling checks system. The worrisome problems and challenges to efficient legal practice in Nigeria, and the culture of corruption that now characterize the criminal justice delivery system in Nigeria have been traced to criminal institutions and the law itself.

One would not fail to acknowledge the constitutional approval of the civil law and the Sharia law to co-exist in one nation, and a citizenry who are expected to respect the civil law in a situation where some Muslim citizenry are forced to be judged by the Sharia courts on matters already stipulated and captured in the overall Nigerian civil and criminal body of laws. In some instances, punishment met to one under sharia does not tally in proportionality and means when measured with those recommended for same offenses or crimes under the secular laws of Nigeria. This creates some kind of tension and disparity in legal processes and mar uniformity in process within Nigeria. Another important thing to note about the need of the natural law

model to drive the wheels of legal practice in Nigeria is the varied normative stands of the different customary law formations across the country with the typical sharia law in Northern Nigeria as sources of concern if their various practices do not get scrutinized under specified rational and moral principles.

Other perceived issues in the Nigerian legal system include: congestion of court workloads, strategic delay in the dispensation of justice to allow for manipulation of the process to suite particular interests, bribery, abuse of process and inefficiency of the judicial personnel and law enforcement personnel. From the above, one clearly sees that underlying the inefficacy and inefficiency of the legal system in Nigeria as one that is intrinsically moral with regard to the process itself but also with reference to the character and professional ethics of most Nigerian judicial officers.

The need to address these exigencies affecting the practice of law in Nigeria, the lack of trust that the citizenry now have in the Nigerian judiciary and the continued clamour for legal reform in Nigeria projects need for a legal theory that has adequate moral content for both the legal process and legal professional ethics. Thus, the Aquinas' natural law theory, with its subsequent improvements can actually serve to reconstruct the already existing legal system in Nigeria.

It is the position of this study, therefore, that irrespective of the more complex situations that face the establishment and applications of human positive laws in whatever field of legal play required, the relationship between natural law and human laws cannot be disengaged. It is not just a natural process but a rational course for man's continued need for ordered and rational society, just as the common good remain the loftiest goal of the state and all social formations.

CONCLUSION

The different legal systems round the world, and in particular, the Nigerian legal system which showcases a mix of legal traditions actually portray that it is indeed difficult to draw thin lines between the major schools of law. Positive law actually have strands of legal positivism, legal historicism, and cultural relativism. But in all, the principles of the natural law remain fundamental to all and runs through all, in the legal process and in the professional ethics of the judicial officers. Even when they try to deny its existence, they end up contradicting themselves and disrupting the course of justice. It therefore follows, that the natural law should be made institutional to all positive laws to serve as guide and to provide the moral authority required to avoid abuse or manipulation of the legal process. It is in line of this argument, that this paper suggests a strategic review of the Nigerian legal system, to restore back popular trust and to reconcile the conflicting paths along which the secular and religious laws in the country are currently toeing, creating a more just and organized legal system.

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