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The Natural Law Theory in Traditional African Jurisprudential Thought

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Abstract
This paper is an exercise in Comparative Philosophy in that it attempts to compare the idea of Natural Law which is the basis of the Natural Law theory in Western Jurisprudential thinking with a similar idea which occurs in Traditional African Jurisprudential thought. Thus the paper traverses the areas of Philosophy of law and Jurisprudence and of African philosophy. The thesis of this paper is that criticisms of the Natural Law theory or the Natural Law school of Jurisprudence does not imply that it has not contributed to the development of law and the legal system. It still does. The paper contends that Natural Law ideas have not only influenced the evolution of positive law, but in many cases have come to form part of it. The paper affirms the point that indeed, traditional African jurisprudence in which the metaphysical, the religious, the moral, the political and the legal are unified and which recognizes two realms of law, one resting on human authority and the other claiming divine or natural origin and therefore entitled to supremacy over the former – must have its origin in the same considerations which ground Western Natural Law theory.
Keywords: Natural law theory, African Jurisprudence, African Philosophy, Philosophy of law.

1. Introduction

This paper is an exercise in Comparative Philosophy in that it attempts to compare the idea of Natural Law which is the basis of the Natural Law theory in Western Jurisprudential thinking with a similar idea which occurs in Traditional African Jurisprudential thought. Thus the paper traverses the areas of Philosophy of law and Jurisprudence and of African philosophy. The thesis of this paper is that criticisms of the Natural Law theory or the Natural Law school of Jurisprudence does not imply that it has not contributed to the development of law and the legal system. It still does. The paper contends that Natural Law ideas have not only influenced the evolution of positive law, but in many cases have come to form part of it. The paper affirms the point that indeed, traditional African jurisprudence in which the metaphysical, the religious, the moral, the political and the legal are unified and which recognizes two realms of law, one resting on human authority and the other claiming divine or natural origin and therefore entitled to supremacy over the former – must have its origin in the same considerations which ground Western Natural Law theory.

The paper is divided into seven sections. The first section is our introduction where we state the focus and aim of the paper and advance the main thesis or thrust of the paper. The second section deals with a brief history of the evolution of the Natural Law theory and presents its major tenets. The third section articulates the traditional criticisms which have been brought against the Natural Law theory. The fourth section introduces traditional African jurisprudence and discusses its essential elements. Section five concerns itself with a comparative analysis of the essential tenets of the Natural Law theory and essential elements of traditional African jurisprudence. In the sixth section we carry out a general appraisal and conclusion of the paper. Section seven is a presentation of the literature cited in the paper.

2. The Natural Law Theory: Its History And Tenets

The central thesis of the Natural Law theory in Western philosophical jurisprudence is that there are certain principles of human conduct, awaiting discovery by human reason, with which man made law must conform if it is to be valid. Natural Law is anchored on the supernatural. The law was either ordained or handed down by the Supreme Being and can be discernible by human reason. Natural law theory in Western philosophical jurisprudence has a history reaching back centuries B.C. Professor Andrew F. Uduigwomen explains that,

> *In Western philosophy, the origin of the philosophy of Natural Law is often traced to the early Greek philosophers who made a vital contribution to it. Although some of these philosophers were influenced by mythical thought, they were, nevertheless, principally concerned with exploring the basic principle or principles governing the universe, which would explain the structure and functioning of the universe. What is unique about these philosophers is their belief and insistence that to achieve a true understanding of the universe we should not just rely on intuition and revelation but the power of human reason aided by observation (175).*

This approach to understanding the universe had far reaching effects, most important was that the universe was perceived as a rational order and that since human beings could be said to partake of this order,

then it would be easy to determine the rational principles governing human conduct and society.

Plato and Aristotle, during the Socratic Age of Greek philosophy made some input in the development of Natural Law theory in Western philosophical jurisprudence, but Natural Law theory was to find its real construction and popularity with the stoic philosophers, centuries later. The stoics held the view that since reason is the supreme endowment of man, man must live according to the dictates of reason. Their idea of reason as the common possession of men led to their belief that all men are members of the same commonwealth sharing in reason, and that right reason is law.

In the Medieval period, the Natural Law theory found unique expression in the views of the likes of St. Augustine and St. Thomas Aquinas. St. Augustine's chief argument regarding law and justice was that the political state is not autonomous, and that in making laws the state does not merely express its power to legislate. The state must follow the requirements of justice. Augustine rejected the notion that justice is conventional or that it is relative, differing from each society to another. Neither is justice dependent on the whims and caprices of the ruler or sovereign. For him, justice was to be discovered in the structure of human nature with its relation to God. According to Augustine, "… Justice is not the product of man's personal opinion, but something imparted by a certain innate power" (Quoted in W. T. Jones, 136). St. Thomas Aquinas equally contended that law making must not be an arbitrary act but must be done under the influence of the natural law, which is man's participation in God's eternal law. Positive law's must consist of particular rules derived from the general principles of Natural Law. Any positive human law that violates the Natural Law loses its character as law. It is a perversion of law and loses its binding force in the consciences of men. Aquinas argued that the lawmaker has his authority to legislate from God, the source of all authority, and to God he is responsible. As Aquinas put it, "law is dictated to men from heaven by reason" (Quoted in A. Apara, 1.). If the sovereign decrees an unjust law by violating God's divine law, such a law, said Aquinas, "must no wise be observed" (Jones, 212).

The political sovereign has his authority from God, and the purpose of his authority is to provide for the common good. Authority is never to be used as an end in itself or for selfish ends. Nor must the common good be interpreted in such a way that the individual is lost sight of in the collective whole. The common good must be the good of concrete persons. Thus, the end of law is to make men good. As Aquinas put it, "the proper effect of law is to lead its subjects to their proper virtue… to make those to whom it is given good" (Jones, 212). Aquinas added that, the only "true ground" of the law giver is his intention to secure "the common good regulated according to divine justice" and thus it follows that "the effect of law is to make men good…" (Jones, 213).

What this suggests is that the phrase "common good" has no meaning for Aquinas except to the extent that it results in the good of individuals. According to Aquinas, "the goodness of any part is considered in comparison with the whole… since then every man is part of the state, it is impossible that a man be good unless he be well proportionate to the common good" (Jones, 215). The entire scheme of society and its laws is characterized by the rational elements in it. Law itself, said Aquinas, is "an ordinance of reason for the common good, made by him who has care of the community, and promulgated" (Jones, 216). Thus, although the sovereign has authority and power, the laws must not reflect this power in a naked sense but as domesticated by reason and aimed at the common good.

During the Renaissance period of Western philosophical history, Natural Law theory took a secular dimension. Emphasis was shifted from the supernatural dimension to the rational character of the Natural Law. It was held that natural law could still apply even if God did not exist. Uduigwomen, quotes Lloyd to elucidate this stage of the evolution of Natural Law theory where Lloyd explains that the argument at the time was that,

> *The unique quality of man lay in his reason and this rational element is shared by all mankind. Hence, reason dictated a rational order in human affairs, an order which could be elicited by reasoning alone, and which, at any rate in broad outline, should operate everywhere. A system of Natural Law theory could be regarded as universally valid (178).*

After the Renaissance, the Natural Law theory acquired a revolutionary dimension. There emerged the view that individuals possessed certain fundamental rights in the state of nature which they took with them to civil society which itself is a product and is still being protected by the Natural Law. This dimension of the Natural Law theory was given impetus in the theories of the social contract theorists – Thomas Hobbes, John Locke and Jean Jacques Rousseau. According to these social contract theorists, the power of government is only held in trust in a contractual arrangement with the people, such that any infringement on the fundamental natural rights of the people terminates the trust and entitles the people to reassume their authority. It has been acknowledged that this revolutionary approach to the natural law theory inspired the American and French Revolutions.

In the contemporary period, the sphere of Natural Law theory has whittled down. According to Uduigwomen,

> *In the field of jurisprudence, it is merely treated as a family of theories apposed to another family of theories collectively regarded as Legal Positivism. While*

> *Natural Law emphasizes the ethical or moral dimension of law, Legal Positivism stresses that although the morality of law is a subject of critical examination, law and ethics are distinct (179).*

Leading contemporary Natural Law theorists in Western philosophical jurisprudence include H.L.A Hart, Jean Dabin, Stammler, John Rawls, Clarence Morris, Jerome Hall, John Finnis and others. They have continued to vehemently defend the Natural Law thesis in our time.

For instance, Jean Dabin in his book *General Theory of Law* maintains that the law of nature was "deduced from the nature of man as it reveals itself in the basic inclinations of that nature under the control of reason" (237). He argues that human nature is identical in people everywhere and that the precepts of Natural Law are universal despite historical, geographical, cultural and other such variations. Just as Aquinas maintained, Dabin opines that one of the precepts of Natural Law is concerned with the good of society, which is the purpose of state and law. The state provides order and laws are means to that end. By virtue of this function of the state, Dabin concedes that the state is superior to all other groups, while state law "is the sole true law." Laws may be expressed either as statutes, precedents, customs, etc, but they are general regulations of conduct, not of conscience. Dabin posits that laws are in the main obeyed, but when they are not obeyed, then the authority of the state can compel obedience. From his position that laws are directed to conduct and not to conscience, Dabin succeeds to argue that there is a moral duty to obey those positive laws which conform to the Natural Law principle of promoting the "common good." If a law does not conform to this principle, then such law is not morally binding because "everybody admits that civil laws contrary to Natural Law are bad laws and even that they do not answer to the concept of law." (280).

Another contemporary version of the Natural Law theory in Western philosophical jurisprudence is this one which has come to be known as "Natural Law with a variable content" of which Stammler is the exponent. In his book *Theory of Justice*, Stammler, distinguishes between technical legal science, which concerns a particular legal system, and theoretical legal science which involve rules giving effect to fundamental principles. Technical legal science deals with the content of the law while theoretical legal science relates them to ultimate principles. Consequently, he distinguished between the "concept of law" and "the idea of law or justice."

He approaches the "concept of law" as follows: Order is appreciable through perception or will. Community or society, is "the formal unity of all conceivable individual purposes," and by this means the individual may realize his ultimate best interests. Thus Stammler submits that "law is necessary apriori, because it is inevitably implied in the idea of cooperation." A just law aims at harmonizing individual purposes with that of society. Accordingly, Stammler attempted to provide a formal, universally valid definition of law without reference to its content and he defines law as "a species of will, other-regarding, self-authoritative, and inviolable."

He explains that law is a species of will because it is concerned with orderings of conduct; other – regarding because it concerns a man's relations to other men; self-authoritative because it claims general obedience, and inviolable because of its claim to permanence.

For Stammler, the "the idea of law" is the application of the concept of law in the realization of justice. Every rule is a means to an end, so one must seek a universal method of making just laws. A just law is the highest expression of man's social activity. Its aim is the preservation of the freedom of the individual with the equal freedom of other individuals. In the realization of justice, Stammler admits that the specific content of a rule of positive law will vary from place to place and from age to age and it is this relativity, which has earned Stammler's theory the name of "Natural law with a variable content." (see Stammler, pp 52-110).

John Rawls does not deal with Natural Law as such but he too formulated a general theory of justice which was based on reason, concerns social justice and purports to be comprehensive and to this extent his formulation tends to be naturalistic. Rawls in his book, *A Theory of justice* assumes that society is a more or less self-sufficient association of persons, who in their mutual relationship recognize as binding certain rules of conduct specifying a system of cooperation. Principles of social justice are thus necessary for making a rational choice between various available systems. The way in which a concept of justice specifies basic rights and duties will affect problems of efficiency, coordination and stability. This is why it is necessary to have a rational conception of justice for the basic structure of society. We need not go into the niceties of Rawls theory but the important point to note is that his formulation emphasized the rational element. Thus, it is naturalistic. (see Rawls, pp 4-63).

Professor Clarence Morris begins his own thesis with the proposition that "justice is realized only through good law" (21). His general thesis is that law has to be justified morally, socially and technically. Laws not grounded on moral considerations are doomed in the long run. For Jerome Hall moral values need to be included in a definition of positive law. This makes him a Natural Law theorist. He goes on to insist that moral and social considerations should be unified in law. But John Finnis has a more sophisticated version of Natural Law. His theory is in the tradition of Aristotle and Aquinas. In his influential book titled *Natural Law and Natural Rights*, he argues that the Natural Law doctrines of Aristotle and Aquinas have been generally

misunderstood and misrepresented. His challenge in that book was to remove Natural Law from the theocratic metaphysical setting of its classical postulation and also eliminate the notion of obligation from it. He therefore argues that the Natural Law question is not that of obligation, but that of knowing what is good and fitting for man. A practical understanding of the good for man commits one to acting in accordance with this understanding. Once man sees what is good, fitting and desirable for his nature, he is committed to pursuing it. Thus, the principles of Natural Law are nothing other than practical principles, or put differently, they are principles of practical reasonbleness.

Finnis contends that neither Aristotle nor Aquinas sought to derive "ought" values from "is" (facts). In defending both philosophers, he claims that Natural Law as presented by Aristotle and Aquinas is not about nature but essentially about what conforms to reason. When we talk about right and wrong, we are not referring to human nature but to reasonableness and the precepts of Natural Law are the basic reasons for action. Finnis enumerates seven basic values which are not arrived at through reflective reasoning on facts but are self-evident to anyone of the age of reason. Uduigwomen very aptly expresses these basic values to include (1) life, which is the first and primary value (2) knowledge, which has to do with a preference for true beliefs over false beliefs; (3) play, which refers to performance for the sake of it; (4) aesthetic experience, which refers to the appreciation of beauty (5) sociability, which has to do with acting for the sake of one's friends well-being (6) practical reasonableness, which refers to the use of one's intelligence to order one's life (7) religion, which refers to one's ability to reflect on the origins of the universe, human freedom, and so on (183).

It is practically reasonable to pursue these values because they are necessary for man's well-being. As Finnis himself puts it, "the more fully a man participates in them, the more he is what one can be" (103). And for Finnis, the state of being what one can be is Nature. What are traditionally known as Natural Law precepts, enjoining us to pursue these values are simply principles of practical reasonableness, for it would be unreasonable not to pursue them as reasonableness requires us to do so. Finnis then concludes that what the Natural Law exponents in its classical form really meant was practical reasonableness rather than the notion of obligation coming from a transcendental law. By this articulation, Finnis believes that he had divorced Natural Law theory from the theoretical metaphysical setting of its classical postulation and established it on a firm secular foundation.

From this articulation of the long history of natural law theory in Western philosophical jurisprudence one can decipher certain basic or fundamental tenets of natural law theory. These are as follows:

(1) Natural law theory promotes the idea that there are two laws, one resting solely on human authority (positive law) and the other claiming divine or natural origin (Natural Law).
(2) Natural law is supreme over man-made (positive) law and the latter for it to be valid or authentic must conform to Natural Law.
(3) Natural law, as a law of reason, is self-evident and is known naturally with the development of man's reason.
(4) The obligation of the Natural Law comes from within, as part of man's very nature as a rational being.
(5) Natural law is the foundation of truth and justice.
(6) The purpose of Natural Law is the common good of all mankind.
(7) Natural Law is immutable, valid for all times, in all societies, and is applicable to all men without exception.
(8) A proposition is valid as law, not simply for the reason that it has satisfied some formal conditions, but by virtue of some element of morality.
(9) Unjust and immoral laws are always in conflict with Natural Law and thus they are absolutely null and void.
(10) Natural Law is an apriori law, which is known apriori.

3. Traditional Criticisms Of Natural Law Theory

Round about the beginning of the 19th century, the existence of absolute principles was attacked by David Hume, who pointed out that there is no causal connection between facts and ideas. He argues that one cannot logically derive an "ought" from an "is". Cause and effect is an empirical correlation to be found in the physical sciences. Conceptions such as good and evil, for example, are subjective emotional reactions. Values are not inherent in nature, nor is justice. Reason can only work out the means that will lead to specified results; it cannot evaluate the latter. Hume favoured the firm and inflexible application of rules, although he conceded that these should be wisely designed in the first place and should be changed when conditions demand. (see Jonathan Harrison, *Humes Theory of Justice*, pp 151-222).

It was on these lines he attacked the prevailing conceptions of Natural Law. The conception of a perfect, complete, discoverable system was challenged. If there was such a thing, the question that arises is, why are there so many divergent interpretations of Natural Law; and why is positive law needed at all? During the same

period, (early 19th century), another objection to Natural Law came. This time, the teachings of historians and sociologists, who laid stress on environment. Historical investigation helped to explode many assumptions. For instance, the idea of the "state of nature" and "the social contract" was debunked. Research into the early history of society exposed the mythical nature of the contract. It became the accepted view that the unit in early society was the family or clan, not individuals.

Likewise, the apriori methods of the Natural Law philosophers were unacceptable to those nurtured in the pragmatic spirit of science. Natural law postulates were subjected to critical examination with disastrous results. Their bases were revealed as unsubstantiated hypotheses or else the results of false inference. Where, for instance, is the foundation for the assertion that "Truth is worth pursuing", or that "knowledge is something good to have."

Again, it was argued that it is a wild inference to assume that because certain institutions in different countries are alike, that must be because they are reflecting some universal law. More recently, it has even been suggested that the idea of Natural Law is no more than a psychological reflex. The very diversity observable in systems of positive law raises in the mind, it is said, an anti-thesis of a fixed and immutable law. This coupled with an innate tendency to attribute reality to ideas prepares the way for belief in the existence of Natural Law. For these reasons it became evident that the unceasingly complex problems of the 19th century required a realistic and practical approach, not the easy application of abstract preconceptions. The climate of opinion at the beginning of the 19th century was such that Natural Law theories could not survive, and in their place arose analytical and historical positivism with increasing emphasis on a sociological approach to problems.

During the post-modern period of the history of Western philosophy some critics of natural law theory argued that the Natural Law claim that laws of proper conduct may be discovered by human reason rested on a simple ambiguity of the word "law" and that when this ambiguity is exposed, Natural Law receives its death-blow. Critics like Bentham and Mill, who most fiercely attacked Natural Law, contend that the perennial confusion between laws which formulate the course or regularities of nature, and laws which require men to behave in certain ways must be resolved. The former, which can be discovered by observation and reasoning, may be called "descriptive" and it is for the scientist thus to discover them. The latter cannot be so established, for they are not statements or descriptions of facts, but are "prescriptions" or demands that men shall behave in certain ways. Consequently, their difference lies in the fact that prescriptive laws may be broken and yet remain laws, because that merely means that human beings do not do what they are told to do; but it is meaningless to say of the laws of nature, discovered by science, either that they can or cannot be broken. If the stars, for instance, behave in certain ways contrary to the scientific laws which purport to describe their regular movements, these are not broken but they lose their title to be called "laws" and must be reformulated.

Jean Paul Satre, another critic of Natural Law, in his submission, argues that the existence of Natural Law implies the existence of God (the divine legislator of Natural Law). But since God does not exist, there is nothing like Natural Law. Oladele Balogun in is essay on *Natural Law Theory: An Exposition* opines that,

> *There is a lot of sense in Satre's view because our society is comprised of different groups: the groups of theists, atheists, agnostics and desits. All the same, our society, in order to attain peace and happiness, must be governed by laws. For law therefore to be applicable in the society, it must be more than Natural Law since atheists and agnostics should be respected as members of the society (39).*

Natural Law theory has also been criticized from the perspective that its proponents give Natural Law the same status as moral principles or rules, for actually, what to them the reason should discover as Natural Law, they believed to be equally moral principles. Their contention is that human laws for them to be valid laws should accord with these moral principles. Critics like Salmond, arguing against this presumption maintains that "laws differ from moral rules in certain ways." In most cases, there are legislative procedures for changing the law, but on the other hand, to change moral rules by legislation is not only factually impossible, it is unimaginable. What sense would it make to say that certain acts which have always been morally wrong shall now on by decree be morally permissible? Again, disputes as regards the interpretation of laws could be settled in court, but how do we attain final settlement in moral dispute? (see J. Fitzgerald, *Salmond on Jurisprudence*, pp 2-36).

The foregoing are some of the traditional criticisms and objections which have been raised against natural law theory in western philosophical jurisprudence. Let us consider traditional African jurisprudence.

4. Traditional African Jurisprudence

The way to an adequate articulation of African jurisprudence in order to capture the African idea of Natural Law or to show the African semblance of the Natural Law theory in Western philosophical jurisprudential thought is to approach our investigation by an enquiry into certain states of affairs, types of behaviour, attitudes and patterns which the traditional African considered as ideal or good and worth pursuing, that is, by way of an enquiry into certain traditional African values; and then we need to further consider the

mode of the application of law in the settlement of disputes in the African setting. There are some highly cherished values of the traditional African life, but for the purposes of our discussion of traditional African jurisprudence, we are going to be concerned with (1) the value of religion and the sacred (2) the value of truth and justice (3) the value of responsibility (4) the value of high moral standards and good character. We shall then consider the mode of application of law in the settlement of disputes or in the attainment of justice for the common good.

4.1 The value of religion and the sacred

Several authors have remarked about the importance and influence of religion in traditional African society. J.S. Mbiti in his phenomenal work on *African Religion and Philosophy* declares "Africans are notoriously religious… Religion permeates into all the departments of life so fully that it is not easy or possible always to isolate it" (1). Innocent Asouzu in his own seminal work on *The Method and Principles of Complementary Reflection in and Beyond African Philosophy* affirms that "African religion was not a pass time affair neither was it a part time preoccupation but a till time personal encounter with the divine" (254). The following statement was also made in specific reference to the Igbo people of Nigeria, but the statement is true of all traditional African societies.

> *They are… a truly religious people of whom it can be said as it has been said of the Hindus, that they eat religiously, sin religiously… religion of these natives is their existence and their existence is their religion (Quoted in Nwala, 114).*

Each African people has its own cultural heritage. Religion is a part of this cultural heritage, but it is by far the richest part of the African heritage. Religion is found in all areas of the African life. It dominates the thinking of the African peoples to such an extent that its shapes their culture, their social life, their political organisations, their economic activities and of course, their traditional legal system and jurisprudence.

We are not going to bother ourselves here with an explanation of the intricate details of the elements of African religion. It suffices to state that fundamental in African religion is the belief in the existence of a Supreme Being (known by various names), numerous local deities with specific functions, divinities, ancestors, numerous abstract forces which relate and interact with each other.

Religion is one of the core values of traditional African society. We have to take a long quotation from J. S. Mbiti because Mbiti's submission on that account very adequately establishes how and why religion is a core value for the African. According to Mbiti,

> *Because traditional religions permeates all the departments of life, there is no formal distinction between the sacred and the secular, between the religious and non-religious, between the spiritual and the material areas of life. Wherever the African is, there is his religion: he carries it to the fields, where he is sowing seeds or harvesting a new crop; he takes it with him to the beer party or to attend a funeral ceremony; and if he is educated, he takes religion with him to the examination room at school or in the university; if he is a politician he takes it to the house of parliament (2).*

Mbiti's submission continues;

> *Although many African languages do not have a word for religion as such, it nevertheless accompanies the individual from long before his birth to long after his physical death. (2)*

Furthermore, Mbiti submits

> *Traditional religions are not primarily for the individual, but for his community of which he is part. Chapters of African religion s are written everywhere in the life of the community, and in traditional society there are no irreligious people. To be human is to belong to the whole community, and to do so involves participating in the beliefs, ceremonies, rituals and festivals of the community. A person cannot detach himself from the religion of his group for to do so is to be severed from his roots, his foundations, his context of security, his kinships, and the entire group of those who make him aware of his existence. To be without one of these corporate elements of life is to be out of the whole picture. Therefore, to be without religion amounts to a self-excommunication from the entire life of society and African peoples do not know how to exist without religion (2).*

What more needs be said about the value of religion and the sacred for the traditional African. Religion is the strongest or ultimate motivational factor in the behaviour, overt or mental, of the traditional African.

It is believed in many African societies that their morals were given to them by God from the very beginning. This provides an unchallenged authority for the morals. It is also believed or thought that some of the departed and the spirits keep watch over people to make sure that they observe the moral laws and are punished when they break them. This additional belief strengthens the authority of the morals.

The African moral sense, in the course of the years, produced customs, rules, laws, traditions, taboos, and values which can be observed in every African society. Morals deal with human conduct. This conduct has

two dimensions. There is personal conduct, which has to do specifically with the life of the individual, for example, he would ask himself whether it is right or wrong for him to eat, to work in his farm, to visit the medicine man when he is sick, and so on. But the greater number of morals has to do with social conduct, that is, the life of society at large, the conduct of the individual within the group or community. African morals lay a great emphasis on social conduct, since a basic African view is that the individual exists only because others exist: *I am because we are, and because we are, therefore I am*.

Because of this great emphasis on one's relationship with other people, morals have been evolved in order to keep society not only alive but in harmony. Without morals there would be chaos and confusion. Morals guide people in doing what is right and good for both their own sake and that of their community. They help people do their duties to society and enjoy certain rights from society. It is morals which have produced the virtues and values that society appreciates and endeavours to preserve; such values as friendship, compassion, love, honesty, courage, self-control, integrity, selflessness, helpfulness, bravery, truthfulness and justice. On the opposite side, morals sharpen people's dislike and avoidance of vices like cheating, treachery, theft, selfishness, dishonesty, greed, improper sexual relations, secretive life, and so on. We have pointed out the belief in African religion that God gave people their moral rules of conduct. In some cases, it is even stated which particular morals were ordered by God to be kept. God is thought to be the ultimate guardian of human morality. Some African peoples believe that God punishes moral offenders only occasionally. It is up to society to deal with those who break its morals. If society fails to find out who may have committed certain crimes, such as murder, for instance, then the community concerned may pray or perform rituals to ask God to punish the unknown murderer. This is the reason why traditional African societies had several taboos. A taboo is a contravention of a known prohibition, some what like the criminal code of modern societies. Breaking of taboos (e.g incest, killing of sacred animals, women climbing trees) and all those serious offences that are grossly out of tune with general practice are punishable by the community.

It is also believed in some African societies that certain diseases or accidents come only from God in punishment for unknown or unconfessed moral offences. If there is a large scale natural calamity such as a serious drought, flooding, or devastating earthquake, people often interpret it as a punishment from God upon the community or society concerned as a result of increased moral offences. This interpretation means that natural calamities are believed to be caused by society itself because of its falling moral standards. God brings those calamities to punish the people and bring them back to a proper observance of their morals.

The point of the foregoing is that religion as a core traditional African value, is itself, the source or foundation of a system of religious, moral and legal values which regulate and harmonize the African life. It is African religion, like every religious system though, which tells the African what is right and what is wrong; what is good and what is evil. What is just and what is unjust; what is lawful and what is unlawful; what is virtue and what is vice; what is worthy and of value and what is worthless and without value.

4.2 The value of truth and justice

Flowing from the value of religion and the sacred is the value of truth and justice. Concern with truth for the traditional African was primarily moral and not cognitive or epistemological as with concern with truth in Western philosophy; and in African culture God who is the Creator of all things, who also knows all things, and who is He who decrees morality, is the one who knows the truth of things. Many African societies have names of God that describe God as Truth, or Doer of Truth or Knower of Truth. Thus the African says that things are true because they are effects of His creating knowledge. Thus, the value of truth derives from the African value of religion, which involves the fear of God for the African.

Majority of traditional African societies believe that God metes out justice. Justice is a principle that respects the truth of who man is, and in doing so, demands rights as a consequence. Justice stems from the social nature of the human personality and governs his interactions, obliging him to give others their due and ensuring that he receives his due. Francis Arinze has rightly observed concerning the Igbo that it is justice that rules the relation between man and man, and furthermore that justice is one of the main pillars of Igbo morality (Arinze, 29). If we consider that justice concerns giving each his due and also consider the varied relations men have with one another, then the different facets of justice become clear.

For the African, toward his parents, man owes the justice of piety or filial respect and obedience. Each person in African traditional life lives in or as part of a family. In the family, individuals are closely bound to each other, both because of blood or marriage and because of living together. The moral order within the family must therefore be complete in order to regulate and maintain its welfare. In all African families, there is a hierarchy based on age and degree of kinship. The oldest members have a higher status than the youngest. Within that hierarchy there are duties, obligation, rights, and privileges dictated by the moral sense of society. If the value of justice in the family requires that children have to respect and obey their parents, justice – giving each is due – requires that parents, have a duty to look after children, protect them, educate them, discipline them, clothe them and bring them up to be well behaved and integrated.

In traditional African society if parents fail in their duties towards their children, the wider community may punish them through pouring shame on them, ostracizing them, or even taking more serious steps. If children fail in their duties, they may often be beaten, or have something taken away from them. At home, it is expected that children will be taught the values of telling the truth, to be honest, generous, considerate, hardworking, friendly with one another, hospitable and so on. These are fundamental moral values and duties in traditional Africa which begin to be taught and practiced at home.

In African culture, toward his superiors or elders, in the name of justice, man owes respect and obedience. Toward every sort of benefactor, in the name of justice, man owes gratitude. And toward his creator, God, in the African experience, man owes a justice called religion. God is concerned with the moral order of mankind, and therefore He upholds the moral law which enjoins truthfulness and ensures justice. In most African societies, justice in the form of punishment for an infraction of the moral order, comes in the present life. For that reason, misfortunes may be interpreted as indicating that the sufferer has broken some moral or ritual conduct against God, the spirits, the elders or other members of his society. This does not contradict the belief that misfortunes are the work of some members, especially workers of magic, sorcery and witchcraft, against their fellowmen. Every African community has its own set form of restitution and punishment for various offences, both legal and moral. These range from death for offences like practicing sorcery and witchcraft; committing murder and adultery, to paying fines of wine, cattle or money; being mercilessly beaten up, banishment for some other offences. It is generally the elders of the area who deal with disputes and breaches arising from various types of moral harm or offences against custom and ritual. Traditional chiefs and rulers have the duty of keeping law and order, and executing justice in their areas.

Lying is condemned in traditional African culture. The liar is considered to be dishonest, insincere and untrustworthy. In the eyes of the community a liar is seen as a feeble undependable character, a misfit and a cheat. Lying is condemned for its consequences; foremost is that a liar is unreliable when the need arises for an enquiry into any affair. A liar blocks every possible avenue to finding out the true position of things. And in African culture, truth is sacred and sacrosanct. A liar could generate rancour, disaffection, even hatred between friends or relations. He is also capable of spreading false rumour, which could set up bad blood in the community. Thus, the quality of the good life in traditional African society is judged according as it is lived in truth and justice. Thus, it can be maintained that in traditional African society, life is meaningful only in so far as it is lived in truth and justice.

Mbiti notes a form of justice administered through the use of the curse. The operative principle in this context is that if a person is guilty, evil will befall him according to the words used in cursing him. By the application of positive magic, it is believed, a person can curse an unknown thief or other offender. But most of the curses are within family circles. Here, the operative principle is that only a person of a higher status can effectively curse one of a lower status, but not vice versa. The most dreaded curses are those pronounced by parents, uncles, aunts or other close relatives against their "juniors" in the family. The worst is the curse uttered at the death – bed; for once the pronouncer of the curse has died, it is practically impossible to revoke it. If the guilty person repents and asks for the curse to be lifted, the person who pronounced the curse can revoke it either automatically or ritually if it is a very serious one (211). Testimonies abound in African communities, telling about the fulfillment of curses where a person is guilty. If one is not guilty, then the curse does not function. The logic of the African in this regard is that God is fair in His administration of justice – giving each his due.

Because the African environment is one of complementarity: *I am because we are, and since we are, therefore I am*, there is a method of oath taking for the purpose of establishing and maintaining good human relationships. There are oaths which bind people mystically together; the more popular one which creates what may be called a blood "brotherhood" concerns a situation where two people who are not closely related go through an oath ritual which often involves exchanging small amounts of their blood by drinking or by rubbing it into incisions on each others body. From thence they begin to look upon each other as real 'blood" brothers or sisters, and will behave in that capacity towards each other for the rest of their lives. Their families may also be involved in this "brotherly" contract, so that for example, their children would not intermarry. This form of oath places great moral and mystical obligations upon the parties concerned; and any breach of the covenant is dreaded and feared to bring about misfortunes.

There are oaths taken when people join the so-called "secret societies" that exist in African societies, when they are initiated in the communal rites of passage or in professions like divination. Other oaths are taken when secret information is divulged, to guard some knowledge or other secrets. Oaths may also be taken by children before the death of their parents if the latter want very much that their children observe certain instructions or carryout important requests. Oaths range in seriousness: some are meant to bring about death if they are broken, others cause temporary pain or misfortunes of one type or another (Mbiti, 212). The belief behind oaths is that God, or some power higher than the individual man, will punish the person who is not truthful or faithful to the requirements of the oath or covenant. Any breach of the requirements of the oath or covenant will attract the commensurate justice. Note here that we have not taken a position on whether this oath

taking practice is right or wrong, good or bad; we are simply presenting the facts and attempting to appreciate the thinking and experience of those involved in the situation.

The point made from the foregoing is that the value of truth and justice in the traditional African experience of value flows from the value of religion and the sacred. Truth and justice are valued because they derive from the nature of God Himself, who is concerned about the moral order and harmony of society. Here too, we must note the transcendental perspective of justice, or put differently, the transcendental element of traditional African jurisprudential thinking.

4.3 The value of responsibility

The African world is a world shared with other individuals and beings. The Supreme Being, local deities, divinities, ancestors, spirits, as well as numerous abstract forces in an ordered relationship. There is the belief in the existence of order and interaction among all beings. The interaction is essentially harmonious and complementary. And disorder is seen as the result of some improper conduct on the part of any of the beings, most especially, the human being. Human survival and existence depends on a proper maintenance of this order. To safeguard and ensure this cosmic and social order in traditional Africa, rights, duties and obligations on one hand and prohibitions, taboos, and sanctions on the other hand were devised and enforced through various means. Thus, each person in the community had great responsibility.

Consequently, responsibility was considered as an esteemed, virtue and held as core value in traditional experience of values. Each person exists as part of the community and each member of the community had a role, some responsibility and duties in the community. Ones role or duty was determined by one's age, gender, health, and abilities. Furthermore, each person in African traditional life lives in or as part of an extended family. There are family morals, some of which we have discussed in the preceding section. There are also community morals which govern the welfare of the community.

What strengthens the life of the community is held to be good and right. What weakens to life of the community is, held to be evil and wrong. To safeguard the welfare of the community, there are many taboos and abominations concerning what may not be done and the consequences of doing so. For example, there are taboos forbidding the use of certain words which are thought to be offensive in various contexts. It is wrong to break those taboos, whether the taboos themselves are good or bad as such. Similarly, there are tabooed actions, relationships, colours and numbers. It is taboo in many African societies for a person to marry a close relative. It is a taboo or an abomination to have sexual intercourse in the bush, or with another man's wife. Breaking these taboos constitute a breach of morals within the community. Even though the individual exists for his society and not vice versa, the community respects his property and life. Other individuals would be morally wrong to molest him or steal his property. The community must show justice towards the individual, for this is a moral duty of society. The point made here is that no one can act without consequence. A wrong done by the individual will have adverse effects on his or her community and the community shares responsibility for the wrong committed by its members.

There are morals concerning the social, economic and political life of the people as a whole. These cover aspects of life like mutual help in time of need, maintaining social institutions like marriage and the family, defending the land in time of invasion or aggression, protecting the children, the aged and the weak, punishing the offenders, maintaining peace, law and order, and so on. Morals, customs, laws and traditions working together are the main pillars for the welfare of society. Morals produce and sanction the other pillars because unless something is felt to be morally right in the eyes of the traditional African, it will not become a custom or law. But in turn, when something is a custom, it becomes good and right in the eyes of society.

In the eyes of a traditional African community, many things were held to be morally wrong and evil, such as: murder, rape, robbery, telling lies, stealing, being cruel, saying bad words, showing disrespect, practicing sorcery, or witchcraft, backbiting, being lazy or greedy or selfish, breaking promises and so on. Whoever does them is considered to be a bad or evil person. The seriousness of the offence varies according to its nature, and from society to society. On the other hand, there were many things that were held to be morally right and good, such as: kindness, politeness, showing respect, being truthful and honest, being reliable, keeping promises, working hard, being hospitable, being considerate, helping others, practicing justice in public life, keeping the good traditions and custom's of one's society, and many others. Whoever followed these precepts and moral values was approved by society and considered to be a good person.

Consequently, great premium was placed on responsibility for conduct. When people break moral laws, they suffer shame in the sight of society. A father or mother who neglected to take care of his or her children or wards was looked upon as a "bad" father or mother. A husband or wife who did not live up to his or her duties and responsibilities was considered to be a "bad" husband or wife. In some cases such "bad" or irresponsible persons were ostracized or kept out of the social circles of their friends and relatives. In serious cases there were ways of making compensation and bringing about reconciliation. Sometimes rituals were performed to purify people who have committed serious moral offences, and to renew their good relationships with other members of

their society.

There was the widespread practice in many African societies in which the community would punish a moral offender by beating or stoning him to death. This was done particularly to thieves and alleged witches. Such a step shows how seriously the African communities take their morals and that the community is above the individual. In day-to-day matters of human conduct people know a priori what is right and good as well as what is wrong and evil. The morals are normally written in their mind and conscience, through the long period of their upbringing and their observation of what other people do and do not do. Since the morals of each traditional African society were embedded in its customs, traditions, rituals, beliefs and practices, people assimilate them as they grow up and become participant members of their community and society. These are community morals, and everyone who is a member of the community, must be responsible and participate in its moral welfare. This is seriously so in the environment where the individual is conscious of himself in terms of *I am because we are, and since we are, therefore I am*. Whoever constantly or deliberately breaks his community morals eventually found the community punishing him in return.

4.4 The value of high moral standards and good character

We have noted the existence of family as well as community morals in the traditional African way of life. We have noted that what strengthened the life of the community was held to be good and right and what weakened the life of the community was held to be evil and wrong. Consequently, African traditional ethics placed very emphatic value on the maintenance of high moral standards which must be reflected in the goodness of character of men and women. A good man is considered to be a man of good character and such was highly respected in the community.

A man of good character behaves well towards his fellow men and women. According to Mbiti, the long list of regulations which the man or woman of good character must observe includes: Don't kill another man except in war; don't steal; don't show disrespect to people of a higher status; don't have sexual intercourse with a wide variety of persons, such as another man's wife or husband, your sister, or other close relative or children; don't use bad words especially to someone of higher status; don't backbite; don't tell lies; don't despise or laugh at a cripple; don't take away someone else's piece of land; keep the many taboos and regulations concerning parts of the body; proper behaviour according to kinship relationships, and activities such as hunting, fishing and eating; observe the correct procedure in ritual matters and so on (214).

Goodness of character does not, of course, consist of avoiding vices alone; it also (and more importantly) involves the cultivation of virtues, such as kindness, generosity, hospitality, justice, respect for elders, obedience to legitimate authorities, promise keeping, humaneness and (for the females) virginity before marriage and fidelity in marriage. It also includes modesty and decency in the mode of dressing, the shunning of materialism, corruption, embezzlement and unjustified conduct. Morality in the African context is expressed in conduct or behaviour, which is reflected in the good or bad character of the persons who make up the community or society.

Morality is always seen in the social context. Hence, any serious violation of the moral order has a social aspect, which involves serious social consequences. The whole society is affected, for every evil act is an anti-social act, which has adverse effects on the whole community. Any evil act also causes a disruption of the ontological order, the natural order or Natural Law. Joseph Omoregbe has noted that, one of the most serious violations of the moral order in African traditional ethics is the employment of mystical forces to do harm to one's neighbour. This is a typical example of evil moral behaviour. Hence, witchcraft, which is precisely the employment of mystical forces to harm one's neighbour is uncomprisingly condemned all over Africa. The witch is the very incarnation of evil, the typical example of an evil person (40).

Thus the African sense of morality, it needs to be reiterated was a communal morality. By this we want to emphasize the point that African traditional morality had a preponderant social, communal or interpersonal reference and practicality with a transcendental dimension. It was a morality, which set standards against and excluded any form of individualism that considered just the welfare of the individual outside the social or even against the communal welfare. This is founded on that principle of *I am because we are, and since we are, therefore, I am*, which is to say that one is there for the community, just as the community is what guarantees the individual his or her fullest welfare. Thus the foundation of the value of high moral standards and good character is the African consciousness of the need to promote the mind-set of "we need one another." In such a society, people felt the natural need for one another and made laws for the practicalisation of such. Everyone who is a member of the community had a duty and responsibility to participate in its moral welfare by ensuring high moral standards and upholding good character. Consequently, people of bad character were punished for their moral offences and evil actions.

We need to reemphasize the point that in the traditional African perception of moral values, God is thought to be the ultimate upholder of the moral order. He could not have been indifferent to morality. In traditional African thought, God is concerned about morality because He is concerned about human welfare.

Since He is a good God, He cannot be indifferent to human welfare. He cannot be indifferent to morality and the moral order in community. Hence, he ensures justice by rewarding the virtuous and punishing evildoers through the wisdom and sagacity which he endows patriarchs, priests and elders with or through the agency of the living dead, spirits, divinities and gods who are his servants. According to Omoregbe, this understanding of God and His relationship with men, explains why,

> *… in African traditional ethics it is futile for anybody to think that he can commit a crime in secret and go scot-free, for God who sees whatever is done in secret will always ensure justice by punishing such an evil doer, sooner or later, in this life or in his next (reincarnated) life (39).*

Omoregbe notes further that,

> *Even grave crimes would deny one the possibility of reincarnating at all. In African traditional life, not to be allowed to reincarnate is the greatest punishment that could be meted to any human person. It is as grave as the Christian concept of eternal life forever. At any rate, evil never goes unpunished, for nothing can escape the divine justice. God is the searcher of hearts who sees and knows everything and whose judgement is sure and inescapable (39).*

Following from the above exposition, it can be seen why Africans traditionally placed very emphatic value on the maintenance of high moral standards and the promotion of good character: the communal sense and the fear of God. this is the value pursued when people desire or cherish a "good name" in the community or hold "integrity" as a value.

Now, we need to consider the mode of the application of the law, moral rules, in the settlement of disputes or in the attainment of justice for the common good. It is important to note from the onset that in the traditional African experience of value in the area of truth and justice and the application of law, much preference is placed on *arbitration* as an alternative to *litigation* as a means of settling disputes. Arbitration was inevitably the preferred practicable alternative to litigation in day-to-day human interaction because that approach engendered mutual trust and confidence in the society where social solidarity, communalism, mutual dependence and complementarity were highly cherished traditional values.

There were no established courts, but the village assembly usually met and heard and decided cases that arose between one person and another or between the community and some recalcitrant member. Depending on the arrangement of the particular African society and the nature of the case, the process of arbitration was likely to commence at the family meeting – in Igbo land for instance, it is called the *Umu nna*. From these appeal went to the village assembly or meeting, made up of either just the village elders or the general adult population. Some larger communities had higher tribunals. This was the general pattern.

The taking of evidence lent more weight on eyewitnesses account than hearsay. Weight depended on the integrity and credibility of the witness. Age, interest, known reputation and the probability of the facts alleged, having regard to all the other circumstances of the case, were all considered. If at the end of the hearing, the tribunal was unable to say which side was telling the truth, the judgement was shifted from the province of human (mortal) to that of divine wisdom. Swearing on some juju was then ordered. Who swore the juju depended on the nature of the dispute. If a man was being accused of doing an act and he was denying, it was he, the accused, who swore that he did not do the act alleged. If on the other hand some property was in dispute, it was the person claiming it who swore.

This introduction of the spiritual dimension to the arbitration process was a consequence of the awareness of the traditional African of the role of deities and spiritual forces as part of the *missing links* of African reality.

In a paper titled *Crime and the Nigerian Society*, the Retired Hon. Mr. Justice C. A. Oputa, commenting on "capital crime and the indigenous Ibo society" points out that under Ibo ancient customary law, homicide was considered a very serious, as well as a very heinous offence and under that law homicide never went unpunished. According to the learned Jurist,

> *The native Ibo mind is always shocked and perplexed by the modern "English" criminal procedure adopted in our courts where a man he "knows" to be a "murderer" is pronounced not guilty and set free because of insufficient evidence or some other technicality. The presumption of innocence, the onus of proof being on the prosecution, the technical rules of evidence especially the rules against hearsay – all these would have sounded absurd to the ancient Ibo ear. Up till now, they are beyond the comprehension of the ordinary Ibo man. To him there is only one law for murder and that law is hanging. It was not at all difficult for him to prove murder relying rather heavily as he did on hearsay evidence (9).*

In our experience today, no one would deny that the approach of litigation involves a lot of sophistry, quibbling and legal positivistic technicalities, in formal court proceedings which undermine truth and the course of justice.

Innocent Asouzu sees the traditional African preference of arbitration over litigation as a consequence of his realization of the "transcendent complementary unity of consciousness." According to Asouzu, "transcendent complementary unity of consciousness is "the highest form of actualization of communal experience as shared experience" (106). This experience helped the traditional African address, in a relatively successful manner, most of the challenges posed by his world.

In relation to judicial procedure, Asouzu submits that,

> *The traditional African society was deeply committed to the idea of efficacy of retribution arising from non-commitment to the demands of the experience of transcendent complementary unity of consciousness. This mutual experience makes arbitration a viable alternative towards checking excesses and tension in* society (188).

Asouzu explains further that

> *Due to this mutual experience, the ego automatically becomes a part of the judges in its own case. Since the unity is mutual, every verdict can at anytime be overruled by a more superior verdict provided by the unity of purpose grounded of all whose interests are at stake and one that is rooted on the ultimate foundation of meaning as is represented in the deities and spiritual forces (188).*

The point made is that, based on the complementary logic of the traditional African founded on the principle that "every thing in reality serves a missing link", and in the awareness of the transcendent complementary unity of consciousness, the issue of legality, justice and fairness transcends mere litigation and arbitration of mortals. There is the spiritual dimension because the deities and spiritual forces constitute part of the "missing links" of African reality.

For the traditional African the law deriving from the binding force of the transcendent complementary unity of consciousness transcends formal positivistic court proceedings. For him, in the pursuit of truth and justice there must be a fusion between the logical and formal and the truthful and factual in a way that generally helps protect the ontological character of truth. Truth, for the traditional African, is more than correspondence of statements to facts since it is ultimately connected to meaning. Meanings themselves have implications, not only for the physical empirical but also for the transcendent spiritual. Following this mind-set, the African seeks to understand truth from a comprehensive, wholesome, total and ultimate perspective connected to the dynamic complementary unity of consciousness, involving both natural or physical and supernatural or spiritual implications.

In summation, the point of the foregoing is that in traditional African philosophical jurisprudence, the thinking was that matters of truth, justice, reward, vengeance, decisions about right and wrong, good and evil are matters that in many instances, transcend the control of mere mortals such that any transgressions or meritorious acts that escape the adequate attention of mortals are still capable of being punished or rewarded as a result of the natural mutual complementarity of the interacting forces which bind all missing links of reality.

5. A Comparison Of The Essential Tenets Of Natural Law Theory And Essential Elements Of Traditional African Jurisprudence

In our discussion earlier of the Natural Law theory in Western philosophical jurisprudence, we identified ten key tenets of Natural Law theory. To compare these essential tenets of Natural Law theory in Western philosophical jurisprudence with the essential elements of traditional African jurisprudence we shall consider each of the ten tenets of Natural Law theory in turn and see how each is reflected or discarded in traditional African Jurisprudence.

We stated first, that Natural Law theory promotes the idea that there are two laws, one resting solely on human authority (positive law) and the other claiming divine or natural origin (Natural Law). Here, we see an affinity between this Western idea with the traditional African view that there is the transcendental realm where God decrees morality and the physical realm where the community enforces its morals, laws and values. Secondly, in the Western characterization of Natural Law, Natural Law is supreme over man-made (positive) law and the latter for it to be valid or authentic must conform to Natural Law. This idea falls in squarely with the idea in African traditional worldview that God is supreme and the ultimate guardian of human morality, thus His moral decrees are supreme. He is the one who metes out justice. As a consequence of the communal sense of the fear of God, communal morality, values, laws must conform to the standards set by God, the Supreme Being.

In the Western conception of Natural Law, Natural Law as a law of reason is self-evident and is known naturally with the development of man's reason. In the traditional African conception, Natural Law which is God's law is known not just by reason alone, but also by intuition, revelations and observance of nature because the African man is a keen observer of nature. There is an African proverb which says that :"A man who has one finger pointing at another has three pointing towards himself." This is a proverb of nature, a statement of natural law. The proverb attempts to explain certain intricacies and manifestations of nature by observation. In using this proverb, the African elders are metaphorically talking about aspects of nature, natural law and daily life. It

means that while the act of accusing others can make us aware of our responsibilities, we must religiously and naturally remind ourselves that we too are culprits. It means that the injustices in life, and the deficiencies of our society are problems of our own justice and responsibilities.

Another tenet of Natural Law theory in the Western characterization of Natural Law is that the obligation of the Natural Law comes from within, as part of man's very nature as a rational being. This also applies in the African conception of the Natural Law. The African view is that man has the innate capacity and power to discern truths in matters, including the recognition of injustice and unjust law. Yet, another tenet of Natural Law theory in the Western conception is that Natural Law is the foundation of truth and justice. This position is affirmed in traditional African jurisprudential thinking. We have noted that in African culture, God who is the creator of all things, who also knows all things, and who is He who decrees morality (Natural Law), is the one who knows the truth of things. We noted that many African societies have names of God that describe God as Truth, or Doer of Truth or Knower of Truth. We also noted that majority of traditional African societies believe that God metes out justice. Thus God, who is the promulgator of Natural Law is He who lay the foundation of truth and justice. In this regard, the concept of Natural Law in Western and African jurisprudence are equivalent.

It is also a fundamental tenet of Natural Law theory in its Western conceptualization that the purpose of Natural Law is the common good of all mankind. This idea in Western jurisprudence is also related to the idea in traditional African jurisprudential thinking that the African universe, being an essentially religious and a moral universe, God is concerned about morality because He is concerned about human good and human welfare. Since He is a good God, He cannot be indifferent to human welfare, He cannot be indifferent to morality and the moral order in community. Hence, he ensures justice by rewarding the virtuous and punishing evildoers to ensure the common good.

Further, in the Western characterization of Natural Law, Natural Law is immutable, valid at all times, in all societies, and is applicable to all men without exception. There is this same understanding in African traditional jurisprudential thought. For the African, it is believed that God never changes. According to Mbiti, "some people in Kenya say that God is the same today as he was yesterday…" (Introduction to African Religion, 53). He also informs that,

> *In central Africa there is a proverb that says "God never dies, only men do" In Zaire one of his names means "He of many suns, the eternal God." This means that his time is beyond reckoning, he does not change, he is not subject to the natural processes, of growth, old age, decay or death. Infact, in Nigeria the people sing that "Nobody has ever heard about the death of God, because he never dies." (53).*

If God never changes, then His law, His rules, His moral decrees never change. They are immutable and valid at all times.

In the African conception of God, He is spirit Being and everlasting, limitless and present everywhere, all-powerful ruler of the universe, His moral decrees are not only immutable and valid at all times, they apply in all societies and to all men without exception. This must explain why certain values are commonly cherished universally.

For the Natural Law theorists a proposition is valid, as law, not simply for the reason that it has satisfied some formal conditions, but by virtue of some element of morality. Natural Law in its Western conceptualization states that law, in whatever form, must reflect or have a minimum content of morality to be just. Law necessarily entails morality and it must have certain moral qualities – what Lon Fuller calls the "inner morality of law." Traditional African jurisprudence acknowledged this point and as such laws were promulgated essentially to promote the moral welfare of the community.

Finally, following Natural Law theory in its Western conceptualistion, unjust and immoral laws are always in conflict with Natural Law and thus they are absolutely null and void. In the traditional African context it was likewise. Traditional African do's and don'ts were subject to the divine laws of nature whereby the gods, spirits, and ancestors constitute surveillance on the lives of the people, guided by transcendentally justifiable moral codes. In the network of interaction between the Supreme Being, local deities, divinities, ancestors, spirits as well as numerous abstract forces, the fear of punishment by God or the gods, expressed in the idea of retribution and nemesis, confirms the existence of Natural Law and justice and guarantees the nullity of unjust laws which conflict with Natural Law.

From the foregoing discussion, it is clear that traditional African jurisprudence was grounded on considerations of natural law and that the African idea of Natural Law is quite similar to the idea of Natural Law in Western philosophical jurisprudence.

6. Appraisal And Conclusion

Our aim in this essay was to carry out an exposition of the Natural Law theory, as it is operative in traditional African jurisprudential thought. We adopted an approach of comparative analysis of the conceptualization of Natural Law theory in Western philosophical jurisprudence with the operation of

Natural Law theory in African jurisprudence. What this paper has established is the thesis that traditional African jurisprudence in which the metaphysical, the religious, the moral, the political and legal are unified is anchored basically and essentially on Natural Law considerations. Thus, it can be argued that traditional African legal system and jurisprudence is founded not on legal positivism, but on Natural Law theory.

This essay also shows that the idea of Natural Law in traditional Africa is quite similar to the idea of Natural Law in Western philosophical jurisprudence – that is, that the Natural Law is divine and is discoverable by human beings by the application of reason. We have also shown that the essential tenets of the Natural Law theory as it is conceptualized in Western philosophical jurisprudence conform in all respects with the essential elements of traditional African jurisprudence. For the avoidance of doubt, or for the sake emphasis, let us state these essential tenets of Natural Law theory:

(1) Natural law theory promotes the idea that there are two laws, one resting solely on human authority (positive law) and the other claiming divine or natural origin (Natural Law).
(2) Natural law is supreme over man-made (positive) law and the latter for it to be valid or authentic must conform to Natural Law.
(3) Natural law, as a law of reason, is self-evident and is known naturally with the development of man's reason.
(4) The obligation of the Natural Law comes from within, as part of man's very nature as a rational being.
(5) Natural law is the foundation of truth and justice.
(6) The purpose of Natural Law is the common good of all mankind.
(7) Natural Law is immutable, valid for all times, in all societies, and is applicable to all men without exception.
(8) A proposition is valid as law, not simply for the reason that it has satisfied some formal conditions, but by virtue of some element of morality.
(9) Unjust and immoral laws are always in conflict with Natural Law and thus they are absolutely null and void.
(10) Natural Law is an apriori law, which is known apriori.

The above are also generally the essential elements of traditional African jurisprudence. Again, this is a re-emphasis of our thesis that traditional African legal system and jurisprudence is based on Natural Law theory

The major criticism that legal positivists raise against Natural Law theory is that Natural Law proponents give Natural Law the same status as moral principles or rules. They seek to divorce moral considerations from law strictly. But how can we divorce moral considerations from good or just laws? We cannot imagine any form of positive law which must be legitimate, just and promulgated for the common good, which is not tempered or moderated by some moral considerations and moral content. Since law is made for man, and man is a moral being, living in an essentially moral universe, any law, for it to be authentic and legitimate cannot ignore transcendental moral considerations. This is the logic that prevails in Natural Law theory and in African traditional jurisprudential th

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