

# An Appraisal of the Impact of Natural Law on Contemporary Legal Systems

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## 1.0 Introduction

Discourses on natural law have spanned aeons<sup>1</sup> of human history and it has remained a recurring decimal in jurisprudential thoughts till date. In its chequered history, it has taken on different forms, changing in contents, role and scope. Natural law has survived many turbulent periods during which its relevance came under threats but emerging always, as it were, with renewed vigour and growing influence on the legal systems the world over. The search for the ultimate philosophical foundation of law having universal application has led to different ideas and theories from the ancient periods to the modern times. The concern, primarily, has been how to subject positive law to higher and overriding principles of natural law which are universal and immutable in character. In the process different versions of natural law have emerged. The conceptions of natural law of the early Greek philosophers are essentially metaphysical in character. They attempted to establish inextricable nexus between natural law and other elements that constitute the cosmos. The Romans, on their part, made natural rights into natural law and sought to discover the contents of natural law. In the middle Ages law was largely expressed in terms of theological principles and beliefs; the seventeen and eighteen centuries put forward rational – theological or rational – ethical natural law and at the end of the eighteen century Kent replaced the rational foundation by once again a metaphysical natural law. In the contemporary times John Finnis and Lon Fuller spearheaded a completely secular approach to natural law.

This paper undertakes an overview of the various ideas from the ancient to the contemporary that have shaped natural law. More importantly, it evaluates the utility and significance of natural law. It also assesses its impact on contemporary legal systems. It finally considers the prospect of its relevance in the future.

## 2.0 An Overview of The Evolution Of Natural Law

Ideas and conceptions of law and justice transverse human history and all peoples and nations of the world, at different stages of their history, have intensely ruminated over and developed philosophies of law and justice. The legal theory of the Greeks, however, more than any other nation, stood out and has always been a starting point in most discourses on the evolution of legal philosophy. Edgar Bodenheimer put it as follows:

If we start our survey of the evolution of legal philosophy with an account of the Greeks, rather than that of some other nation, it is because the gift of philosophical penetration of natural and other social phenomena was possessed to an unusual degree by the intellectual leaders of an ancient Greece<sup>2</sup>

The historical evolution of natural law could be traced through the trajectory of five epochal periods in human history: The Ancient Greek Era, The Roman Era, The Middle Ages, The Classical Era and the Modern Period.

## 3.0 The Early Greek Philosophers

The early Greeks were deep and penetrating in their analysis of nature, human societies and its institutions. Thus, they were described as the philosophical teachers of the western world.<sup>3</sup>

The early Greek philosophers approached natural law essentially from the prisms of metaphysics. Law was regarded as issuing from the gods and known to mankind through revelation of the divine will. According to Hesiod, wild animals, fish and birds devoured each other because law was unknown to them but Zeus, the Chief of the Olypian gods, gave law to mankind as his greatest gift.<sup>4</sup> Hesoid thus contrasted *nomos* (ordering principle) of non – rational nature with that of the rational ( or at least potential rational) world of human being. Unlike the Sophists of a later age who sought to derive a right of the strong to oppress the weak from the fact that in nature the big fish eat the little ones, to him, law was an order of peace founded on fairness, obliging men to refrain from violence and to submit their disputes to arbiter.<sup>5</sup>

<sup>1</sup> “The search for a coherent set of natural law principles spans about two and half thousands years” Michael Doherty Jurisprudence: The Philosophy of law, 3rd Edition, London, Old Bailey Press 2004, page 86

<sup>2</sup> Edgar Bodenheimer, Jurisprudence: 1962 The Philosophy and Method of Law, 1<sup>st</sup> Edition, Harvard University Press, P.1.

<sup>3</sup> Ibid

<sup>4</sup> Hesoid, Erga (Works and Says). Tranl. A.W. Mair(Oxford, 1908) PP273-285 (verses 274 ff)

<sup>5</sup> Ibid

Law and religion were largely undifferentiated in the early period. Selphi, a famous Oracle considered an authoritative voice for the annunciation of divine will, was frequently consulted in matters of law and religion.<sup>1</sup> The forms of law-making and adjudication were permeated with important religious ceremonials and the priest played an important role in the administration of justice. The king as the Supreme Judge was believed to have been in office by the authority of Zeus himself.

However, in the fifth century, a fundamental change in Greek philosophy of natural law started. Philosophy generally became divorced from religion and the ancient traditional forms of Greek life were subjected to searching criticism. The thinkers who brought about this fundamental change of values were called the Sophists (School of Enlightenment (5<sup>th</sup> BC)). They considered law purely as human invention occasioned by expediency and alterable at will (Antiphon) as opposed to the notion of unchanging commands of divine being which was the prevailing view up to that time. The Sophists' concept of justice was stripped of metaphysical attributes and analysed in terms of psychological traits or social interests,<sup>2</sup> e.g. the right of the strong was interpreted to be the basic postulate of natural law (callices). Also, the right of might (Trasymachus).

Protagoras, one of the leading figures among the earlier Sophists denied that man could have knowledge about the existence or non-existence of the gods and asserted that man as an individual was a measure of all things, 'being' to him, was nothing but subjectively coloured 'appearance'. He took the view that there exist at least two opinions on every question and that it is the function of rhetoric to transform the weaker line of argumentation into stronger one.

The early Greek Philosophers, in essence, viewed the universe as cosmos existing in regular and organized fashion of destiny, order and reason which are the components of natural law.<sup>3</sup> They observed that natural phenomena confirm to definite patterns and that man, being a free moral agent, behaves in irregular and complicated way. They concluded, consequently that man had obviously gone wrong somewhere since he did not seem always to fit into the order of things.<sup>4</sup>

Socrates did not agree with the characterization of law as the right of might by the Sophists. For Socrates as well as Plato, justice meant that a "man should do his work in the situation in life to which he called by his capacities."

According to him goodness is to be measured by man's intelligence and insight and that this represents a test of reason and goodness of law.<sup>5</sup>

Plato, on his part, saw the physical phenomena of the universe as mere manifestations of superior order laid up in heaven, the study of which is necessary in order to gain insight into the ultimate pattern of human existence. According to him, the understanding and insight of the metaphysical is beyond the ken of mere mortals, philosophers/kings should be rulers to decipher the contents of divine law.<sup>6</sup> He said further that differences of human personality, the variety of human activities and the restless inconsistency of all human affairs make it impossible for any art whatever to issue unqualified rules holding good on all questions at all time... "the best thing of all is not full authority for laws but rather full authority for a man who understands the art of kingship and has wisdom"<sup>7</sup>

Aristotle rejected the idealist approaches of earlier philosophers, particularly that of Plato, his master. He postulated that justice might either be conventional, varying from place to place according to the needs of a particular community or natural, that is, common to all mankind on the basis of the fundamental law of purpose of man as a social or political being. He drew distinctions between laws that applied to individual states which vary and depend on the respective histories, circumstances and peculiarities of laws that apply to all states and appeared to have been designed for all mankind (natural law)<sup>8</sup>. He reasoned that human laws which were considered subordinate to natural laws should stand or fall according to the dictates of natural law.<sup>9</sup>

The transcendental notions of natural law of the early Greek philosophers continued, though in another form, by the Stoic Philosophers, the last of the Greek schools. They put forward ideas on natural law which were later deployed to great use by the Romans in their construction of their *Jus gentium*. It was of tremendous appeal to later natural law jurists. The Stoics saw man as an integral part of the cosmos, endowed with the capacity to reason, as a rational nature, he participated in the rational structure of the forces of the universe. By his understanding of the actual workings of the forces of nature, he comes to realize that everything obeys law of existence.

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<sup>1</sup> Ibid

<sup>2</sup> Roscoe Pound: 2004 *An Introduction of Philosophy of Laws*, 3rd ed., London, Old Bailey Press, P.149.

<sup>3</sup> Michael Doherty: *Jurisprudence: The Philosophy of Law*, 3<sup>rd</sup> Ed., London, Old Bailey Press, P.149; Roscoe Pound: *An Introduction to the Philosophy of Law*, 1954, P.10-11.

<sup>4</sup> Ibid, an upset of the settled pattern of the Cosmos.

<sup>5</sup> Ibid

<sup>6</sup> Dennis Lloyd: 1965 *Introduction to Jurisprudence*, 2<sup>nd</sup> Edition, London, Steven and Son P.57

<sup>7</sup> Ibid

<sup>8</sup> Dennis Lloyd, Op.cit PP.75-77

<sup>9</sup> Ibid

*Epictetus, a stoic philosopher said “We are actors in vast cosmic drama. We cannot choose our own rules, but must act under the direction of the director/Producer of the drama. A plot and various roles have been laid out by the writer and director. The producer has chosen different people to play the various roles. The plot of this drama is provided by the intelligence or reason which pervades all entities and the setting is the cosmos. We gain wisdom in recognizing the role we are called upon to play, and our ability. While some of us have small roles, others have large roles, but all of us play one part or the other. We cannot control things which have no relationship to our role, nor can we change the role of another. We should develop a positive apathy, or sense of detachment in relation to those things we cannot do or influence. We can be somewhat optimistic, after all, we can control our attitudes and inquire into the nature of the cosmos, but we cannot influence its outcome”<sup>1</sup>*

As noted already, the Greek conceptions of natural law in its evolutionary stages, took on different forms. The era represents metaphysical approaches to natural law and highly idealistic in nature. Except the Sophists whose approach was empirical, that of Plato and Stoics saw natural law essentially from the angle of metaphysical forces of creature which are not empirically verifiable. Plato said the normative rules of natural law are beyond the ken of ordinary man and that only philosophers/kings could decipher its contents. Because of the unscientific nature of these approaches, it has found little appeal and acceptance as philosophical foundation of law.

However, Aristotle’s ideas which emphasize that law must espouse goodness of the people became the spring board for non-metaphysical approaches to natural law of others such as Thomas Aquinas and John Finnis. He built on the earlier empirical approach of the Sophists who probably qualified as the earliest positivists. The Stoics ideas that a man who lived naturally was a man who lived by reason were later to be employed by the Romans in their formulation and implementation of their laws within the empire. Since reason is common to all men, the Romans deployed this idea, though as a matter of expedience, given the homogeneity of its population in their formulation of *Jus gentium*.<sup>2</sup>

#### 4.0 The Roman Era

The Roman conception of natural law is, perhaps, most manifest in the works of Cicero.<sup>3</sup> Cicero, a Roman orator and statesman, combined the idea of the Stoics of a universal law of nature which governs the course of human conduct with other Greek influences, believing that the Greek had laid out the basic structures of all philosophical enquiries. His concept of the underlying law of nature goes thus:

*“True law is right reason in agreement with nature, diffused among all men, constant and unchanging. It should call men to their duties by its precepts, and defer them from wrong doing by its prohibitions; and it never commands or forbids upright men in vain while its rules and restraints are lost upon the wicked. To curtail this law is unholy, to amend it illicit, to repeal it impossible nor can we dispense with it by the order of Senate or popular assembly; nor need we look for anyone to clarify or interpret it, nor will it be one law at Rome and a different one at Athens, nor otherwise tomorrow than it is today, but one and the same, eternal and unchangeable will bind all peoples and all ages, and God, its designer, expounder and enactor, will be as it were, the sole and universal ruler and governor of all things and whoever disobeys it, because by this act, he will have turned his back on himself and on man’s nature, will pay the heaviest penalty even if he avoids the other punishments which are adjudged fit for his conduct”<sup>4</sup>*

Cicero ideas have, in a positive way, profoundly affected legal systems the world over. The concept of unchanging, superior precepts, founded on reason, as the ultimate law of humanity has often helped to fight tyrannical laws and oppressive regimes through the ages to the modern times. According to him, in the face this eternal law, all men are equal, a precept flowing from natural law and not decreed by the outward arte facts of

<sup>1</sup> Wayne Morrison, Op.cit, at P.53

<sup>2</sup> Dennis Lloyds, Op.cit at P.53

<sup>3</sup> of Arpinum, (106 – 43 BC)

<sup>4</sup> De Republicc, 3.22.33 in Kelly 1992:58-9, also Wayne Morrison Op.cit at P.54

property or social position. He said further that we are born of justice and it is only bad habits and false beliefs which prevent us from understanding underlying human equality and similarity.<sup>119</sup> Nature to him is only source of precepts which an individual can access through the use of reason. Law of nature exists independent of man-made law (positive law). According to him, if there were no written law against rape in the reign of Tarquine, (the last king of Rome), Tarquine's son still violated 'eternal law' by his outrage on Lucretia. As he put it!

*"for reason did exist, derived from the nature of universe, urging men to right conduct and diverting them from wrong doing, and this reason did not first become law when it was written down, but when it first came into existence, and it came into existence simultaneously with divine mind whereof the true and primal law designed for command and prohibition is the right reason of the high God 2"<sup>2</sup>*

The Roman jurists used the Greek conceptions of natural law based on reason to transform a rigid *Jus civile* into a cosmopolitan system of *Jus gentium*.

## 5.0 The Medieval Period

Theological perspectives of natural law which dominated, in the main, early Greek jurisprudence were carried into the Medieval Period. The era witnessed a pervading influence of theology of the Catholic Church. It loomed large and set the tone and pattern of all speculative thoughts.

Thomas Aquinas, a thirteenth century theologian and philosopher made a remarkable synthesis of Aristotelian philosophy and the Christian doctrines of Roman law. Aquinas ideas have profoundly influenced subsequent theories and constructs of natural law even in contemporary times. He saw law as normative rules, binding on people's actions. The compulsion of law, though it might be backed by sanctions, relies on reason for it to have effect on the will. According to him, the promotion of collective good is what must compel reason. The power of the legislator therefore stems from a duty to promote collective good and that is because the legislator is under a duty to obey the law.<sup>3</sup>

This classic thesis has become universal as there is hardly any system of government in the civilized world, founded on constitutionalism and the rule of law, that has not adopted it. The emphasis of Aquinas is the subjugation of individual interests to the good of the whole, the force of law being that it is a superior institution for the other institutions where rules are made.

Aquinas distinguished between four different kinds of laws:

- (a) Lex eternal (eternal law) which he defines as divine reason known only to God and 'the blessed'. Eternal law governs the entire universe.
- (b) Lex divina (divine law) the law of God revealed in the Scriptures
- (c) Lex naturalis (natural law) consists of the participation of the eternal law in rational creatures.
- (d) Positive law.<sup>4</sup>

Divine law is the written and natural law unwritten exposition of God's eternal reason.<sup>5</sup> According to him, natural law is made up primary and secondary rules. The former is unchanging and universal (though may be added to) while the latter could be changed in rare cases. To him when law is unjust either in respect of the end or in respect of the author, it is irredeemably invalid. However, when it is only unjust in respect of form, Aquinas recommends obedience in spite of the injustice in order to avoid scandal or disturbance.<sup>6</sup>

This again is another profound contribution to legal thought. The controversy rages on in legal discourses even till today what makes law unjust and whether unjust law ought to be obeyed. These issues represent some of the areas of disagreement between the natural law thinkers and those who subscribe to the ideology of the legal positivism.<sup>7</sup> The latter affirm the validity of law in all circumstances where the formal requirements for law-making have been met and view as extraneous issues such as the dictates of reasons or some other metaphysical normative conditions.<sup>8</sup> Even if it is conceded that the principles of reason are extra-legal and confer no validating elements, they represent ideals which guide the direction of and mould the character of positive law. It has played this role throughout history and remains a positive impact on legal systems in the world.

Other theologians<sup>9</sup> of the era also advanced ideas that shaped natural law. Although, the stoic teaching of brotherhood of men which was embraced by the Christian philosophers were different from the theory of law based on reason, it was left for Saint Augustine to give the Stoic idea of absolute and relative natural law a divine twist. In his view only the fall of man from Christian love made human institutions necessary. In the

<sup>1</sup> Ibid.

<sup>2</sup> Ibid at P.55

<sup>3</sup> Ibid at P.55

<sup>4</sup> Ibid

<sup>5</sup> Michael Doherty, Op.cit. 150

<sup>6</sup> Ibid

<sup>7</sup> Raz, *The Concept of a Legal System* 2<sup>nd</sup> ed. 1980.22

<sup>8</sup> Mc Cormick, *Legal Reasoning and Legal Theory* 1978.31

<sup>9</sup> They included Saint Augustine, Ambrose, Gregory, George the Great and Isidore.

golden age of mankind prior to the fall of man an absolute ideal of the law of nature had been realized, man lived in a state of holiness, innocence and justice. They were free and equal, slavery and other forms of domination of man by man were unknown. Human laws, he said further, were seen as mere evils arising out of man's sinfulness, deriving from the fall of man. Law according to him, then assume three forms – *lex temporalis* (positive) law, *lex naturalis* and *lex aeterna*. Natural law was the revelation of eternal law through man soul, reason and heart, the medium by which God speaks to us in our conscience. Natural law was thus equated with the divine law miraculously revealed and partly ascertained by reason. Natural law being imposed by God could only be expounded by the Head of the Catholic Church, the Pope who as, vicar of God, was invested with the power to expound and interpret the law of God which was binding on all men – ruler and the rule – a philosophical justification of the claims of the church for sovereign political authority. The state, though bad could only justify its existence by protecting the peace and the church and striving to fulfill the demands of eternal law is no law at all.

The Roman theologians advanced these postulations of natural law within the context of intense struggle for power between the church and the rulers. The church fathers, it appears, put forward these ideas to limit the exercise of the political authority of the rulers by subjecting their secular laws to higher divine law, the contents of which could only be decipher and interpreted by the church fathers. This version of natural law has thus been criticized as “nothing but a fiction. It is not a reality, but merely an empty phrase, it is errant ‘nonsense walking on stilts’”<sup>1</sup>

### 6.0 From Natural Law to Natural Rights – the Classical And Modern Era.

The classical Era witnessed a major shift towards secularization of natural law.<sup>2</sup> This was brought about by changes occasioned by Reformation and Renaissance of this period which in turn deepened secular, individualistic and liberalistic forces in political, economic and intellectual life.<sup>3</sup> The era completed the divorce of law from theology – for which the thomistic distinction between divine and natural law had prepared the ground. While the medieval philosophers tended to limit the scope of natural law to a few principles and elementary postulates, the classical natural law jurists<sup>4</sup> favoured elaboration of the system of concrete and detailed rules, hence their theory is often referred to as natural law of content.

They shifted the emphasis on the law of reason to a doctrine of natural rights.

Hugo Grotius is known to have laid out certain axioms, principles of natural law and is particularly famous for the enunciating, *pacta sunt servanda*, a principle which requires keeping of promises.

The significance of this natural law principle is seen not only in the legal systems of sovereign states in modern times, it is the cornerstone of international relations. International relations in all its ramifications – political, commercial, military etc. are all regulated by international law which rests on *pacta sunt servanda* as its foundation.

Other axioms stated by him are:

- (a) Abstain from that which belong to others
- (b) Restore to others any goods of his which we may have
- (c) Inflict punishment upon men who deserve it.

All these axioms have found expressions as normative rules in most legal systems of the world either as rights in the constitutions or as offences in the criminal law.<sup>5</sup> Grotius also evolved a social contract theory, which till today, form the basis for legally binding and stable relations among states.<sup>6</sup>

To Thomas Hobbes, the right of nature “is the liberty each man hath to use his own power as he will himself for the preservation of own nature.”<sup>7</sup> and liberty is “absence of external impediments which hinder a man using his power according to his judgment and reason shall dictate to him. But man realizes that part of his natural liberty needs to be given up to avoid the war of the natural state. Reason tells us the first natural law seek peace, and follow it, then we discern then, a second natural law: a man is willing, as long as others are also willing, to lay down this right to all things, and be contented with so much liberty against other men, as he would allow other men against himself”<sup>8</sup>

The whole contraption called ‘Sovereign State’ in modern times is anchored on this first leg of Hobbes’s theory which also provides its philosophical underpinning. Every man has inherent right to self-preservation.

<sup>1</sup> Jeremy Bentham, Theory on Legislation, see Funso Daramola, 2004 *Basic Jurisprudence*, Raymond Communications, Lagos, P.35.

<sup>2</sup> Dennis Lloyds, op.cit

<sup>3</sup> Ibid

<sup>4</sup> They include Hugo Grotius 1583 – 1645, Thomas Hobbes, John Locke and Jean Jack Rousseau.

<sup>5</sup> As Civil and Political Rights, Economic, Social and Cultural Rights e.t.c. Also as offences such as Stealing, Breach of Trust and Criminal Negligence

<sup>6</sup> Michael Doherty, op.cit

<sup>7</sup> Way Morison, op.cit. P.93

<sup>8</sup> Ibid

But man gave up this liberty of his, under a social contract, in exchange for a promise by the state to protect him. Hobbes also acknowledged that primitive sense of contractual obligation inheres in every man. As he put it: “that men perform their covenants made without which covenants are in vain and but empty words”<sup>1</sup> By this Hobbes appears to allude to what is today regarded as the very basis of legal contract – free will and sanctity of contracts.

The most fundamental law of nature, according to Thomas Hobbes, is that peace is to be found wherever it can be found. From this law, the following specific precepts are to be deduced:

- (a) Every man must divest himself of the right to do all things by nature
- (b) Every man must stand by and perform his covenants
- (c) All men should help and accommodate each other as far as may be done without danger to other persons.
- (d) No man should reproach, revile or slander another man
- (e) There must be impartial arbiter in controversies
- (f) Man should not do to others what they would not wish others to do to them.

Most of the precepts stated above have been adopted and expressed as legal norms in most contemporary legal systems of the world.

John Lock used his theory, unlike Grotius, Hobbes and Roseau, to assert the natural rights of the citizen against his government. According to him, state power must be exercised only for the general good of the citizenry.<sup>2</sup> He evolved a doctrine which subjected sovereignty to the will of the governed. This idea has gained acceptance across the world and it is the basis of the assertion that government is an institution of trust. It is a philosophical underpinning of the concept of government that has become valid universally. It has helped not only to check abuse of power by the ‘leviathan’ but to ensure that the exercise of state power is for the good of the citizenry.

Rousseau’s Social Contrast theory boosted remarkably natural law<sup>3</sup>. It extended the frontier of civil liberties<sup>4</sup> most of which are articulated in the constitutions of most countries in the world.

## 7.0 Modern Constructs of Natural Law

In recent times, natural law has assumed a new form and dimension. The scope has been amplified, with ideas of the forerunners of the school developed and made more rational, secular and empirically identifiable.

John Finnis, an outstanding exponent of natural law in modern times, presented perhaps the most scientific, rational and objective natural law.<sup>5</sup> To Finnis, natural law is a set of two principles of practical reasonableness for the ordering of human life and community by which the individual participates in the eternal law.<sup>6</sup>

According to him, in understanding the primary purpose of law, one has to find out the practical reasonableness of law in relation to the making of decisions and executions of actions.<sup>7</sup> The two principles are:

- (a) Certain objective values which are self-evident are known by all humans as being worth striving for.
- (b) The requirements of practical reasonableness.

In respect of the former, he listed the objective values as knowledge, life, aesthetic experience, religion, play and practical reasonableness. Finnis maintains that these values represent the concern of man and should be espoused by man. On the mechanisms for knowing whether these goods are really goods, he said the goodness is self-evident.

John Finnis work has taken natural law out of the realm of conjectures and speculation of earlier approaches. The ‘Objective values’ listed by him constitute the prime concern of legal systems in the civilized world.

Another notable contemporary natural law thinker is Lon Fuller. His natural law thesis touches on the form or procedure law should take rather than the substance. He postulated eight principles of inner morality of law which are not meant to be substantive positive rules but mere moralities of aspiration. They are:

1. The legal system must be based on reveal some kind of regular trends. As such law should be founded on generalization of conduct such as rules, rather than simply allowing arbitrary adjudication.
2. Laws must be publicized so that subjects know how they are supposed to behave.
3. Rules will not have the desired effect if it is likely that your present actions will not be judged by them in future, as retrospective legislation should not be abused.

<sup>1</sup> Ibid

<sup>2</sup> Ibid.

<sup>3</sup> See Rousseau, *The Social Contract* 1762

<sup>4</sup> Ijalaye, 1993 *Natural law And The Nigerian Experience: Nigerian Essays in Jurisprudence*, Ed. T.O. Elias and M.I. Jegede

<sup>5</sup> John Finnis, *Natural Law and Natural Rights*, 1980 CF Lloyd Op.cit. P.136. He is also known as the pioneer of “analytic naturalism”

<sup>6</sup> John Finnis, Op.cit.

<sup>7</sup> Fuller’s Inner morality is not a morality of duty which is normally expressed in terms of rules of a substantive morality such as “thou shalt not kill”. See Micheal Doherty, op.cit

4. Laws should be comprehensible, even if it is only lawyers who understand them.
5. Laws should not be contradictory.
6. Laws should not expect the subject to perform the impossible.
7. Law should not change so frequently that the subject cannot orient his action to it.
8. There should not be a significant difference between the actual administration of law and what the written rule says.

Fuller himself admitted that his list of inner moralities of law is not all-encompassing: “Though these natural laws touch one of the most vital human activities, they obviously do not exhaust the whole man’s moral life”<sup>1</sup>. His moralities of law are ideals which all legal systems should strive to achieve. He himself showed how Nazi regime suffered a progressive decline in its adherence to these principles of legality. He concluded, though, that even if these standards are adhered to, it would not guarantee that they will prevent law being the instrument of oppression,<sup>2</sup> and that the disregard of these principles does not necessarily make a system not law, but just further away from the ideal of legality.

Fuller made significant contribution to the development of natural law. Although he focused only on the form the law should take rather than the substance, his approach, ultimately, impacts positively on substantive rules of legal systems.

### **8.0 Evaluating The Impact And Significance of Natural Law In Modern Times.**

The positive influence of natural law in modern times continues on legal systems in the world. It has shaped the nature, character and general direction of most legal systems. It has been deployed to various uses in human history.

In the progressive historical development of English Legal System, principles of natural justice were invoked by English Courts to check the rigidity of the common law.<sup>3</sup> For instance, a custom will not be admitted in court if it is unreasonable or contrary to the fundamental principles of right and wrong. This is also the position in most legal system.<sup>4</sup> In Nigeria, for instance, a custom which is repugnant to “natural justice equity and good conscience” will not be applied by the court.<sup>5</sup> English courts also make use of Orders of Mandamus, Prohibition and Certiorari to control acts of administrative bodies which run contrary to the rules of natural justice.

The whole idea of ‘equity’ is based partly on natural law ideas and partly on the rules of canon law. Ecclesiastical law, in turn, is a derivative of and rooted in natural law precepts.<sup>6</sup>

Certain concepts and standards have been traced to natural law. These include reasonableness, reasonable man e.t.c. The Roman philosophers, particularly Cicero, conceived natural law largely in terms of the dictates of reason “true law is right reason in agreement with nature, diffused among all men, constant and unchanging”.<sup>7</sup> Hence, in most contemporary legal systems, these expressions feature prominently in their law.<sup>8</sup>

The concept of fundamental human rights which is a phenomenon in the constitutions of most countries<sup>9</sup> in the world and which was incorporated into the United Nations System as the United Nations Declaration of Human Rights 1948. It has its root in the Philosophy of natural law. Also, the ever-increasing scope of human rights has often been rationalized and justified on the principles of natural law.<sup>10</sup>

Natural law has also functioned as philosophical underpinning for different ideologies in human history.<sup>11</sup> In the struggle for supremacy between capitalism and communism, the two sides sought support of absolute rights, social justice etc. for their respective socio-economic ideologies based on natural law ideas. Kelsen suggested that the Western countries deliberately revived the natural law right to property specifically to combat communism.<sup>12</sup> Natural law was invoked to assert the natural rights of colonial and dependent peoples to freedom and political independence, using in particular the right of self-determination.<sup>13</sup> It was also used as a weapon of ideological conflict at the historic Nuremberg trials of the Second World War criminals.<sup>14</sup>

<sup>1</sup> Ibid

<sup>2</sup> Ibid.

<sup>3</sup> Richard Edward & Nigel Stoskwell, 1999, *Trusts & Equity* 4<sup>th</sup> ed. Pearson Educational Ltd. P.3

<sup>4</sup> Ibid

<sup>5</sup> See Section 26(1) High Court Law Lagos State, 1973, Chap52, S.34(1) High Court Law, Eastern Nigeria, 1963, Laws of Ester Nigeria and S.20 (1) High Court Law, WRN, 1959, Cap.44

<sup>6</sup> See Richard Edwards & Nigel Stockwell, op.cit.

<sup>7</sup> De Republica, op.cit.

<sup>8</sup> Such as law of Torts and Contract

<sup>9</sup> Natural law Philosophy inspired historic legal documents such as English Bill of Rights (1689), American Declaration of Rights (1776) and French Declaration of the Rights of Man(1789).

<sup>10</sup> There are civil & Political Rights, Social, Economic & Cultural Rights and Solidarity Rights

<sup>11</sup> Funso Adaramola, (2004) *Basic Jurisprudence*, Raymond Kunz Communication, Pub., Lagos, P.41

<sup>12</sup> Ibid

<sup>13</sup> Funso Daramola, The Right of Self-Determination: A Vanishing Ideology? LASU.L.J. Lagos, 121.

<sup>14</sup> Funso Daramola, “The Crime of crimes, A Call to Arms,” 1994-96 18 Nig. J. Contemporary Law, Lagos 121.

International law was founded and developed on the principles and premises of natural law. In this respect, Hugo Grotius's "*pacta sunt servanda*" and "consent" as the basis of international engagement are crucial and critical to the sustenance of peace and order among international community.

However, natural law has also been deployed for negative uses in human history. Alf Ross opined that natural law is a harlot who is at the disposal of everyone.<sup>1</sup>

Grotius and Hobbes versions of natural law provided philosophical foundation for autocratic regimes and draconian laws.

In modern times, however, natural law is of great significance. Its greatest appeal, it seems, is its insistence on subordinating positive or man-made law to higher and overriding values<sup>2</sup> in an attempt to make the contents of legal systems just and humane. Saint Augustine said "there is no law unless it be just."<sup>3</sup> Although, there is generally no consensus among jurists and legal philosophers on what justice is and the parameters for its attainment, it is generally accepted that law must exist for public good and to promote values commonly accepted in society.<sup>4</sup>

Natural law has functioned as a barometer, as it were, to gauge legal systems and determine how civil, just and humane their normative rules are.<sup>5</sup> The re-invigoration of natural law in the twentieth century was influenced partly by horrible experiences inflicted by years of subscribing to the ideology of legal positivism with its emphasis on form rather than the substance of law. Many regimes with draconian and oppressive laws have been fought and defeated on the template of natural law.<sup>6</sup> The Nazi Germany, the apartheid South Africa etc are some of the regimes whose tyrannical laws and oppressive reigns were clothed with the philosophical legitimacy of legal positivism. Their laws came under severe attacks and condemnation on the basis of the postulates of natural law. In many other places and at different times in human history, natural law has exerted moderating influences on what otherwise would have been horrible and ruthless legal systems. Natural law has played this role and will likely continue to do so even under democratic governments.

Natural law inspired the evolution and application of certain legal concepts, principles and standards in the comity of civilized world and has continually provoked the extension of the frontier of human and property rights. The natural law theories of John Locke, Thomas Hobbes, Grotius and Jean-Jacques Rousseau, although in different models, all provided the philosophical foundations of human and property rights.

## 9.0 Conclusion

Attempt has been made in this paper to examine critically the basic ideas of natural law from the ancient to the contemporary, and their impact on legal systems at various times in human history. It evaluated its impact both positive and negative and noted that natural law postulates have continued to improve the quality of normative rules of legal systems the world over. They are indeed imperatives in any systems of rules that strive to promote public good and attain justice. John Finnis's natural law is particularly classic in articulating the values that should be the concern of man. Fuller's inner moralities of law are *sin qua non* and constitute an antidote to legislative tyranny. It is desirable that both John Finnis and Lon Fuller postulates be made the basis of positive law so that the ends of justice and public good are achieved. Natural law is a weapon against tyrannical and oppressive laws and regimes. Thomas Aquinas assertion that "immoral rule would not be law however it may satisfy formal requirements"<sup>7</sup> continues to resonate forcefully as mechanism needed to check abuse of power, draconian laws and autocratic rule generally. It has almost assumed the status of inviolability under contemporary legal systems. The positive impact of natural law as highlighted in this paper, undoubtedly, will continue to ensure its relevance to the legal systems of the world now and in the future.

<sup>1</sup> Alf Ross, 1958 *On Law And Justice*, London, Stevens & Sons Ltd, 261.

<sup>2</sup> D'Entreves said of natural law "Unrelenting quest of man to rise above the letter of law to the realm of the Spirit," Lloyds *Introduction To Jurisprudence* op.cit P.91

<sup>3</sup> See Lloyds, *Introduction to Jurisprudence* Op.cit P.142. Aquinas said unjust law is a perversion of justice, though still must be obeyed in order to avoid anarchy. See Lloyds, op.cit P.95

<sup>4</sup> S'Entreves, *Natural Law* (rev. ed., 1970) P.34.

<sup>5</sup> Lloyds, op.cit. P33.

<sup>6</sup> Ibid

<sup>7</sup> Abanuka, 1989 "The Ultimate Origin of Moral Norms" In the *Nigerian Journal of Philosophy*, University of Lagos Press, Vol. 1&2, P.63