Natural Law And Man-Made Laws: Criticizing The Latter By Appealing To The Former

EBOH, Akpotor

Department of Religious and Cultural Studies
Ignatius Ajuru University of Education, Port Harcourt, Nigeria
Eboakpos12@yahoo.co.uk , bishopakpotor@gmail.com

ABSTRACT
Natural law is the light of reason inherent in us by nature, through which we perceive what we ought to do and avoid. Hence, natural law, according to its proponents, is “the light of reason,” “the dictates of reason,” or simply, “right reason.” This Reason is the law.

Keywords: Natural, Natural law, Man, Man-made law

INTRODUCTION
Natural law is a theory that says there is a set of rules inherent in human behaviour and human reasoning that governs human conduct. Natural law is preexisting and is not created in courts by judges. Many schools of thought think that is passed to man through a divine presence. Philosophers and theologians throughout history have differed in their interpretations of natural law, but in theory, natural law should be the same throughout time and across the world because it is based on human nature, not on culture or customs. An example of natural law, as interpreted by Hobbes (1939), is that judges should be impartial. On the other hand, man-made laws are those made by humans inform of rules and regulations, bye-laws, legislations, constitutions, etc. It should be noted that man’s laws are inferior to the supreme laws of creation unless man made laws are created in harmonious alignment with the truth and knowledge of natural, universal and spiritual laws. Humankind should therefore, begin to discern the difference between natural law and man-made law if we are going to restore and preserve our divine evolutionary path.

The Concept of Natural Law
Natural law is one of the more difficult subjects that a person can encounter. Whitehead (1982) states: “The concept of natural law is one of the most confused ideas in the history of Western thought” (p.127). This is due to the fact that there are various conceptions of natural law, and because even those who are in basic agreement on natural law theory often cannot see eye to eye on the particulars. In spite of this confusion, there has been enough agreement among natural law thinkers in the West to make it possible to give a general summary of the natural law position and to identify its major claims. The term "natural law" is ambiguous. It refers to a type of moral theory, as well as to a type of legal theory, but the core claims of the two kinds of theory are logically independent. It does not refer to the laws of nature, the laws that science aims to describe. Charles Rice, a contemporary Roman Catholic scholar, defines natural law by saying:

Morality is governed by a law built into the nature of man and knowable by reason. Man can know, through the use of his reason, what is in accord with his nature and therefore good. Every law, however, has to have a lawgiver. Let us say up front that the natural law makes no ultimate sense without God as its author. ‘As a matter of fact,’ said Hans Kelsen, probably the foremost legal positivist of the twentieth century, ‘there is no natural-law doctrine of any importance which has not an essentially religious character.’ The natural law is a set of manufacturer’s directions written into our nature so that we can discover through reason how we ought to act. The Ten Commandments and other
prescriptions of the divine law specify some applications of that natural law (Rice, 1995 p.175).

According to natural law moral theory, the moral standards that govern human behavior are, in some sense, objectively derived from the nature of human beings and the nature of the world. While being logically independent of natural law legal theory, the two theories intersect. A widely recognized nod to natural law and its concepts is present in the Declaration of Independence in the statement that, all men are created equal, that they are endowed by their creator certain unalienable rights (Grant, 2003). Other major philosophers of natural law include Aristotle, Thomas Aquinas and Lysander Spooner.

Contemporarily, the concept of natural law is closely related to the concept of natural rights. Indeed, many philosophers, jurists and scholars use natural law synonymously with natural rights (Latin: ius naturale), or natural justice, while others distinguish between natural law and natural right (Laing & Wilcox, 2013). Because of the intersection between natural law and natural rights, natural law has been claimed or attributed as a key component in the Declaration of Independence (Dickson, 2001). By “natural law” is meant a law that determines what is right and wrong and that has power or is valid by nature, inherently, hence everywhere and always. Natural law is a “higher law,” but not every higher law is natural. The famous verses in Sophocles’ Antigone (449-460) in which the heroine appeals from the man-made law to a higher law do not necessarily point to a natural law; they may point to a law established by the gods, or what in later parlance is called a positive divine law (Alexy, 2002). Nature was discovered by the Greeks in contradistinction to art (the knowledge guiding the making of artifacts) and, above all, to nomos (law, custom, convention, agreement, authoritative opinion) (Laing & Wilcox, 2013). In the light of the original meaning of “nature,” the notion of “natural law” (νόμος τῆς φύσεως) is a contradiction in terms rather than a matter of course (Laing & Wilcox, 2013). The notion of natural law presupposes the notion of nature, and the notion of nature is not coeval with human thought; hence there is no natural law teaching, for instance, in the Old Testament.

The principles informing modern natural law were established by two thinkers who were not themselves natural law teachers, Machiavelli and Descartes. According to Machiavelli, the traditional political doctrines take their bearings by how men should live and thus culminate in the description of imaginary commonwealths (“Utopias”), which are useless in practice; one ought to start from how men do live. Descartes (in Grant, 2003) begins his revolution with the universal doubt, which leads to the discovery of the Ego and its “ideas” as the absolute basis of knowledge and to a mathematical-mechanical account of the universe as a mere object of man’s knowledge and exploitation.

Modern natural law as originated by Hobbes did not start, as traditional natural law did, from the hierarchic order of man’s natural ends, but rather from the lowest of those ends (self-preservation) that could be thought to be more effective than the higher ends. Man is still asserted to be the rational animal, but his natural sociality is denied. Man is not by nature ordered toward society, but he orders himself toward it prompted by mere calculation. This view in itself is very old, but now it is animated by the concern for a natural-right basis of civil society. The desire for self-preservation has the character of a passion rather than of a natural inclination; the fact that it is the most powerful passion makes it the sufficient basis of all rights and duties. Natural law, which dictates men’s duties, is derived from the natural right of self-preservation (Alexy, 2013). The right is absolute, while all duties are conditional. Since men are equal with regard to the desire for self-preservation as well as with regard to the power of killing others, all men are by nature equal. There is no natural hierarchy of men, so that the sovereign to whom all must submit for the sake of peace and ultimately of the self-preservation of each is understood as a “person,” i.e., as the representative or agent, of each; the primacy of the individual—of any individual and of his natural right remains intact.

Natural law, which was for many centuries the basis of the predominant Western political thought, is rejected in our time by almost all students of society who are not Roman Catholics. It
is rejected chiefly on two different grounds. Each of these grounds corresponds to one of the two
schools of thought which are predominant today in the West, positivism and historicism. According to positivism, genuine knowledge is scientific knowledge; scientific knowledge can never validate value judgments; and all statements asserting natural law are value judgments. According to historicism, science (i.e., modern science) is but one historical, contingent form of man understands of the world; all such forms depend on a specific Weltanschauung; in every Weltanschauung the “categories” of theoretical understanding and the basic “values” are inseparable. Hence the separation of factual judgments from value judgments is in principle untenable; since every notion of good and right belongs to a specific Weltanschauung, there cannot be a natural law binding man as man. Given the preponderance of positivism and historicism, natural law is today primarily a historical subject.

Thomas Aquinas (1225-1274) (Burns, 2000), the medieval Catholic scholar, sought to reconcile the Greek concept of natural law with Christian theology. Aquinas began by positing an eternal law - the Divine Reason by which God governs the universe and then proceeded to state that man as a creature has the eternal law imprinted on him and by it derives the natural inclination to proper acts and ends. Aquinas (1979) states:

... the light of natural reason, whereby we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of the Divine light. It is therefore evident that the natural law is nothing else than the rational creature’s participation of the eternal law.

**Characteristics of Natural Law**

Modern natural law has the most striking characteristics. Firstly, natural law is treated independently. That is, modern natural law is no longer in the context of theology or of positive law. Special chairs for natural law were established in some Protestant countries; treatises on natural law took on the form of codes of natural law. The independent treatment of natural law was made possible by the belief that natural law can be treated “geometrically,” i.e., that the conclusions possess the same certainty as the principles. Secondly, natural law has become more and more natural public law. Hobbes’s (1939) doctrine of sovereignty, Locke’s (1947) doctrine of “no taxation without representation,” and Rousseau’s doctrine of the general will are not simply political but legal doctrines. They belong to natural public law; they do not declare what the best political order is, which by its nature is not realizable except under very favorable conditions, but they state the conditions of legitimacy which obtain regardless of place and time.

Whereas pre-modern natural law was on the whole “conservative,” modern natural law is essentially “revolutionary.” The radical difference between modern and pre-modern natural law appears most clearly if one studies the still remembered great modern natural law teachers rather than the university professors who as a rule rest satisfied with compromises. Natural law by itself is supposed to be at home in the state of nature, i.e., a state antedating civil society. In the modern development “natural law” is replaced by “the rights of man”; the emphasis shifts from man’s duties to his rights.

Furthermore, natural law proponents consistently make four claims in regard to natural law: 1) there are unchanging principles of law that exist in “nature” (are part of the natural realm) that define for man what is right, just, and good, and which ought to govern his actions; 2) these principles of law are accessible to all men and are discovered by the right use of reason; 3) these principles of law apply to all men at all times and in all circumstances; 4) man-made laws (e.g., those promulgated by the state) are just and authoritative only insofar as they are derivable from the principles of law in nature (Finnis, 2002). The natural law theory is based on the belief that certain principles of law are inherent in the very nature of things and that men can discern these by means of reason. There is a natural moral order in the universe; a metaphysical realm reached through reason, not the senses. Hence, natural law standards are beyond empirical proof:
Concept of Man-made Law

Man-made law is law that is made by humans, usually considered in opposition to concepts like natural law or divine law. The European and American conception of man-made law has changed radically in the period from the middle Ages to the present day. In the Thomistic view dominant in the medieval period, man-made law is the lowest form of law, as a determinatio of natural law or divine positive law. In the view dominant in the modern period, man-made law is thought of as primary because it is man-made (Finnis, 2003). The Soviet Union went further, not recognizing any such thing as divine or natural law. In several Islamic countries, man-made law is still considered to be subordinate to divine law. Its characteristics are that it is “not absolute”, and is created by human beings “above all” for the regulation of their actions and behaviour (but also for the ordering of things). It has to be generally known and has to take into account both its anthropological determination and its chronological determination. Man-made law is fluid, changing over time in order to adapt to changing real-world circumstances.

The Thomistic concept of man-made law, by contrast, regards law from a different angle. It treats it from the position of its origins. Lex humana or sometimes lex humanitus posita, but sometimes rather lex ab hominibus inventa, is law made by man, rather than made by the divine (lex divina) (Flannery, 2000). What is important about lex humana is not that it is posited by someone, but that someone who posits it is human rather than divine. To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law. Any law that uplifts human personality is just. In several Islamic countries, man-made law is still, in 20th and 21st century legal theory, considered to be subordinate to divine law, in the form of the sharia (Khaddūrī, 2002). In that legal theory, the sovereign power is Allah, not the people, and God-made law takes precedence over man-made law.

Difference between Natural Law and Man-made Law

Man-made law is vulnerable to immorally incorrect and erroneous beliefs when man’s knowledge and understanding fail to harmonize with the laws of creation. For our universe operates within the wisdom of harmonic resonance, and our inability to attune with this wisdom is the cause of our separation and suffering; and the effect is our blind allegiance to the negative expressions of natural law rather than our loyalty to the positive expressions (Finnis, 1980). Man’s dogmatic beliefs are rooted in mental constructs that disregard the integrity of emotional, physical and spiritual components. How do we comply with man-made laws that do not consider the totality of the whole person? The laws of man confine us to an ultimatum for which our failure to comply becomes our fear of punishment.

Thomas Aquinas expounded the concept of Human Law, a distinct form of law alongside Natural Law and Eternal Law, in Summa Theologica (in Flannery, 2001). Thomas asserted the primacy of natural law over man-made law, stating that where it "is at variance with natural law it will not be a law, but spoilt law" (Flannery, 2001). The result of any such conflict is that the man-made law does "not oblige in the court of conscience“ since human law is a determinatio of divine or natural law, and a lower law cannot contradict a higher law. Natural law theorists and others have thusly challenged many man-made laws over the years, on the grounds that they conflict with what the challengers assert to be natural, or divine, laws. Thomas Aquinas himself conflated man-made law (lex humana) and positive law (lex positiva) (Mohnhaupt, 2008). However, there is a subtle distinction between them. Positive law regards law from the position of its legitimacy. Positive law is law by the will of who ever made it, and thus there can equally be divine positive law as there is man-made positive law.

A Critique of Natural Law and Man-made Law

Our historical past is a repetitive story for the rise and fall of empires and kingdoms whose successes and failures have predominantly relied upon the efficiency of mental constructs to rule and steer humanity’s destiny. The established beliefs in which the natural world was to be dominated, feared and exploited have rendered mankind isolated and disconnected from the
guiding principles innate to creation. The truth of our moral compass has been usurped in favour of a false authority whose immoral domain has left us drowning in a turbulent sea of dramas and dogmas. The guiding principles of natural law, with which you can become familiar here, provide us with the morally correct path to co-create a loving world (Heckel, et al, 2010). Our choice to choose love over fear is backed by a universal guarantee for our attainment of true understanding with which to sustain sovereignty, freedom, harmony and order. Our vibrational alignment with the principles and truth bound within natural law is our return to the flow of creation wherein our moral compass is restored.

Natural laws define universal truth that transcends all race, color and creed while man’s laws attempt to restrict the right to sovereign freedom based upon one’s race, color and creed. If all men are created equal, then the creation of man-made laws to suit the bias of locales or conditions is a violation of natural law. Human beings do not possess the authority to dictate written laws under the guise of moral relativism that utterly destroys one’s sovereignty and freedom. Our moral sphere is determined by our alignment to the laws of creation, not by the moral relativity bound within man’s mutable laws. We cannot trade our internal self-mastery to know right from wrong for the moral whims of external authority to dictate moral correctness from immoral incorrectness.

The doctrine of Locke (1947) may be described as the peak of modern natural law. At first glance it appears to be a compromise between the traditional and the Hobbesian doctrines. Agreeing with Hobbes, Locke denies that the natural law is imprinted in the minds of men, that it can be known from the consent of mankind, and that it can be known from men’s natural inclination. His deduction of natural law is generally admitted to be confusing - not to say confused which does not prove, however, that Locke himself was confused. It seems to be safest to understand his doctrine as a profound modification of the Hobbesian doctrine. It is certain that, unlike Hobbes (1939), Locke sees the crucially important consequence of the natural right of self-preservation in the natural right of property, i.e., of acquiring property, a natural right that within civil society becomes the natural right of unlimited acquisition. Property is rightfully acquired primarily by labour; in civil society, however, labor ceases to be the title to property while remaining the source of all value. Locke’s natural law doctrine is the original form of capitalist theory.

Hobbes asserted that the natural right to judge the means of self-preservation is the necessary consequence of the right of self-preservation itself and belongs, as does the fundamental right, equally to all men, wise or foolish. But Rousseau demands that the natural right to judge the means of self-preservation be preserved as an institution within civil society. Every person subject to the laws must as a natural right have a say in the making of the laws by being a member of the sovereign, i.e., of the legislative assembly. The corrective to folly is to be found above all in the character of the laws in general, both in origin and in content: all subject to the laws determine what all must or may not do. The justice or rationality of the laws is thereby guaranteed in the only way compatible with the freedom and equality of all. In the society established in accordance with natural right, there is no longer a need or a possibility of appealing from positive law to natural right, because the members or rulers of that society are not supposed to be just men.

Rousseau further differed from Hobbes by realizing that if man is by nature asocial, he is by nature a rational; questioning the traditional view that man is the rational animal, he found the peculiarity of man in his perfectibility or, more generally stated, his malleability. This led to the conclusions that the human race is what we wish to make it and that human nature cannot supply us with guidance as to how man and human society ought to be. Kant drew the decisive conclusion from Rousseau’s epoch-making innovations: the Ought cannot be derived from the Is, from human nature; the moral law is neither a natural law nor a derivative of natural law. The criterion of the moral law is its form alone, the form of rationality, i.e., the form of universality.

At about the same time that Kant, sympathizing with the French Revolution, radicalized the most radical form of modern natural right and thus transformed natural right and natural law into a law
and a right which are rational but no longer natural, Burke, opposing the French Revolution and its theoretical basis, which is a certain version of modern natural right, returned to pre-modern natural law (Sharma, 2006). In doing so, he made thematic the conservatism which was implicit to some extent in pre-modern natural law. Therewith he profoundly modified the pre-modern teaching and prepared decisively the transition from the natural “rights of man” to the prescriptive “rights of Englishmen,” from natural law to “the historical school.”

CONCLUSION
Since natural law is part of the nature of things the knowledge of it is accessible to all men through reason apart from any supernatural revelation. God may be the source of natural law, but he has inscribed his moral law in nature and in man (who is a part of nature); hence, there is no need for any further revelation outside of nature itself for the knowledge of the moral law. The natural law holds to the sufficiency of nature and man’s intellect (reason) to establish a “just” ethical system for man and society apart from special divine revelation.

Our ethical guidance is embedded within the eternal and immutable laws of the universe that supersedes the limitations of ever-changing moral relevancy. Natural law grants us the morally correct principles as trustworthy guidance to prevent our enslavement within immorally incorrect governance. One should heed the lost generative principle of care by which to say NO to moral relativism, and YES to the immutable laws governing the universe and all creation. Mankind has a moral obligation to check and correct the dogmatic beliefs being imposed upon them so as to defend our sovereign freedom, and to maintain the harmonious and natural order at the heart of our existence. Our moral accountability demands that we understand the difference between natural law and man-made law.

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