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Natural Theory of Right, Indignity and the State in Nigeria

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Abstract

The paper examined the theoretical justification of human rights against the contradiction arising from legal recognition of indigence within the Nigerian Context. The phenomenon of indigence as basis for public life has constituted not only serious limitations to human rights but had attendant consequences for Political, socio and economic development of the country. The natural rights holds that man is free from all forms of restrictions that may jeopardise his functional existence as a human being as long as such freedom does not impede or limit other's functional existence as well. The methodology of research is qualitative and a documentary/archival system of data collection was adopted. The conclusion drawn by the paper is that, if human rights will make theoretical and practical sense in Nigeria, the sections of the law and all practices that recognise indignity should be abrogated to promote individual liberty and create sense of unity among all peoples. This will further help to replace the prevailing primordial orientation with civic type.

Introduction

Right is a universal concept, a standard of quality which summarise the essence of existence of man and humanity. Rights are enshrined in a plethora of international legal instruments, from the United Nations Universal Declaration of Human Rights to regional conventions such as the European Convention on Human Rights and the African Charter on Human and People's Rights. In the domestic sphere, an increasing number of jurisdictions are adopting formal bills of rights, either at the constitutional level or in the form of legislation. Judges in many countries are increasingly willing to draw on international human rights conventions to inform their interpretations of domestic law (Allan, J. & Huscroft 2006).

More generally, political and legal discourse abounds with references to putative human rights, from the right to freedom of speech to the right to government aid in times of hardship. The idea that human beings have certain fundamental rights simply by virtue of being human beings has a long philosophical tradition behind it. Philosophers often call these rights natural rights (Feinberg 1980; Thomson 1986; Hart 1984).

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Historically, the origin of the concept of rights can be traced to ancient Greece and Rome. It was closely linked to the pre-modern natural law doctrines of Greek stoicism whose founder, Zeno, taught that universal working force pervades all creation and that human conduct therefore should not violate the law of nature. Roman law recognized the existence of natural law and upheld certain universal rights that extended beyond the rights of citizenship. Be that as it may, it was only after the Middle Ages that natural law doctrines became closely associated with liberal political theories about natural rights. Till then, the emphasis was on the duties imposed by natural law rather than the rights deriving there from. But even at that, these doctrines, as evident from the writings of Aristotle and Aquinas accepted the legitimacy of slavery and serfdom, thus excluding the concepts of freedom and equality which are the pivotal ideas of natural rights.

Human rights generally had to wait for donkey years to be recognized as general social need. Documents asserting individual rights such as the Magna Carta (1215), the English Bill of Rights (1689), the French Declaration on the Rights of man and citizen (1789) and the United States constitution and Bill of Rights (1791) are the written precursors to many of today's human rights documents. Although its predecessors are indeed ancient, the concept roughly relating to modern usage is first encountered in the aftermath of the seventeenth and eighteenth centuries' revolutions in Europe. The intellectual forces behind the revolutions were to a great extent philosophers, many of whom are associated with theories of natural law. These theories posited rights as given to man by nature itself. Philosophers like Thomas Hobbes, John Locke and J.J. Rousseau each elaborated distinct theories based on their endeavours to discover universally valid principles that would govern such natural rights and freedoms. As influential individuals each in his own context, their theories were employed in struggles against political absolutism and consequently proved important in the development of what would eventually become known as human rights. Despite the far reaching origins of said rights, it was not until after the Second World War that a truly deep and widely spread concern for the protection of human rights was seriously demonstrated. Accompanying this development was the new expression "human rights" that replaced that of "natural rights".

The evolution of natural rights signified a definition of the relationship between states and individuals and adds new elements to interstate relations. The international arena is no longer reserved for states alone; it has become a forum for globally recognized human rights,

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imposing necessary obligations on states to guarantee these rights in the face of their own infractions. Natural rights therefore asserts certain rights like the right to life, property, freedom, self-preservation which are endowed on man by way of his basic nature and as such these rights are inalienable and fundamental to all human beings by virtue of their being born regardless of citizenship or state affiliation and this is in tune with Cranston's definition of human rights which states that human rights by definition is a universal moral right, something which all men everywhere at every time ought to have, something of which no man may be deprived of, and something which is owing to every human being simply because they are human (Cranston 1973).

Contemporary notions of human rights are rooted deeply in this natural rights tradition. In further extension of the natural rights tradition, human rights are now often viewed as arising essentially from the nature of humankind itself (Young 2002). The idea that all humans possess human rights simply by existing and that these rights cannot be taken away from them are direct descendants of natural rights.

United States and France had both suffered from the rule of regimes, which violated many of their citizens' rights. Yet, whilst the rights declarations of the eighteenth century emerged from critiques of forms of state oppression, they themselves, through the positivization of rights, bound the individual to the state, thus reinforcing its legitimacy. Additionally, the act of proclaiming the rights of man implied that ultimately nothing but humanity itself could be referred to in order to guarantee them (Douzinas, 2000: 93). Accordingly, man replaces God and asserts himself as the new source of being and meaning (ibid.). At the same time, however, human rights also construct 'man'. The 'universal' man of the declarations is, in fact, as Hannah Arendt argues, a 'particular' man – a national citizen (hence excluding foreigners, refugees, stateless persons and so on) (Arendt, 1966: 300). Seen thus, the affirmation of equality of the rights declarations actually led to the exclusion of those 'Others' that were not regarded as the 'Same'. This is what Hannah Arendt called the paradox of human rights.

The human rights enshrined in the declarations of the American and French revolutions were meant to be universal only in the sense that all legitimate governments ought to guarantee them for their citizens. In the 20th century the paradox became apparent in the fate of the refugees and stateless people of the inter-war period: "The Rights of Man, supposedly inalienable, proved to be unenforceable – even in countries whose constitutions were based upon them – whenever people appeared

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who citizens of any sovereign state were no longer" (Arendt 1967, 105). Human rights are by definition rights of natural persons independently of their citizenship, national affiliation or territorial residence. However, in Arendt's analysis they are premised upon citizenship as the "right to have rights" (ibid).

Citizenship is the legal institution that designates full membership in a state and the associated rights and duties. It provides benefits such as the right to vote, better employment opportunities, and the ability to travel without restrictions, legal protection in case of criminal charges, and the possibility to obtain a visa for a relative. There are also costs to citizenship, such as the military draft, renunciation of the original citizenship, and the pecuniary and non-pecuniary costs that may be required for naturalization and for recognition at the age of majority. Examples are language and culture tests, waiting periods, and a commitment to avoid activities leading to disqualification.

There are several ways to acquire citizenship: at birth, by naturalization, by marriage. The regulation of citizenship at birth, which determines citizenship acquisition by second generation immigrants, is rooted in the well-defined bodies of common and civil law. The former traditionally applies the jus soli principle, according to which citizenship is attributed by birthplace: this implies that the child of an immigrant is a citizen, as long as he is born in the country of immigration. The latter applies the jus sanguinis principle, which attributes citizenship by descent, so that a child inherits citizenship from his parents, independently of where he is born. Despite being rooted in these principles, during the 20th century - and especially after World War II - in many countries citizenship laws have gone through a process of continuous adaptation, in conjunction with the decolonization phase, the collapse of the socialist system, and the mounting pressure of international migration.

In 18th century Europe jus soli was the dominant criterion, following feudal traditions which linked human beings to the lord who held the land where they were born. The French Revolution broke with this heritage and with the 1804 civil code reintroduced the ancient Roman custom of jus sanguinis. Continental modern citizenship law was subsequently built on these premises. During the 19th century the jus sanguinis principle was adopted throughout Europe and then transplanted to its colonies. By imitation, Japan also adopted jus sanguinis in this phase. On the other hand, the British preserved their jus soli tradition and spread it through their own colonies, starting with the United States where it was later encoded in the Constitution.

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By the end of the 19th century, the process of nation-state formation and the associated codification effort were completed in Continental Europe. At the same time, the revolutionary phase was over in those countries that had been the subject of the earlier colonization era, and 19th century colonization had extended the process of transplantation of legal tradition to the rest of the world. Therefore, by that stage, most countries of the world had established specific provisions regarding citizenship acquisition within a relatively well-developed legal system, with jus soli being the norm in common law countries, and jus sanguinis regulating citizenship law in most civil law countries, despite important exceptions. For instance, civil law Latin America had embraced jus soli early on, while civil law France, with its colonies, had by then already moved toward a mixed regime. However, the next century witnessed a continuous process of transformation of citizenship laws across the world.

In the context of Nigeria and just like in many other countries in Africa, the concept of citizenship had a dual derivative. There was the primordial citizenship, defined by ethnic, communal and ancestral affinities, and the civic citizenship (Ekeh, 1972). The latter tends towards egalitarianism, the former exclusivity. However, it is the former that often serves as the functional basis of defining citizenship even in a constitutional sense and in the distribution of public goods. As Eghosa Osaghae ably demonstrates with a Nigerian example, who is a citizen of Nigeria as stipulated in the 1979 constitution is rooted largely in primordial origins. An individual's membership or origin in an ethnic group or community is a major criterion for the qualification of citizenship. Thus citizenship gains expression more from the primordial, than the civic perspective in Nigeria (Osaghae, 1990). This situation reinforces the bifurcation of citizenship as local and state governments remain exclusionary in their norms and practices, and the rights and privileges they confer on the people. In the localities, there is usually a clear distinction between the "natives" or "indigenes" of those areas, who are considered as the "local citizens" and the "immigrants" or "settlers" who are considered as "non-citizens" (in spite of the fact that they are all nationals of the same country).

In countries like Uganda and the Democratic Republic of the Congo where the ownership and control of land (the main means of livelihood) is still vested in native authorities, "non-natives" are largely denied access to land and also denied the right to have their own native authorities, as doing so will imply recognizing them as "indigenes" and subsequently

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granting them access to land. In other words, residency is not the criterion for inclusion as "local citizens", but "indigeneity". In most cases, the local or state laws sanction this arrangement. In Nigeria, for example, not until recently, "indigeneity" was a criterion for qualification to contest in local elections and not residency. Consequently, it is possible for someone to live all his life in a locality without having a right to be voted for in that locality. The point is that while political reforms and decentralization occurred in most African states in the post-colonial era, there was little real democratization of decentralized institutions. Thus, the state system that subsists reinforces local ethnic and political identities, fragments the political process and undermines the concept of common citizenship for the people in the country.

This essence of this study like others of its nature is to examine the theoretical relevance of natural rights to the practice of indigeneity and citizenship, especially within the Nigerian context.

The whole point of a natural rights analysis is to address the problem of human vulnerability and interconnectedness. No one person is strong or independent enough to pursue happiness in the face of concerted opposition from the masses or from a concerted handful of other people—or from even a single obsessed or evil individual. Natural rights attempts to identify conceptually the space within which people need to be free to make their own choices about the directions of their lives, which includes crucially the choices of how to acquire, use, and dispose of scarce physical resources. Once these rights are identified, it a somewhat but not entirely separate matter of institutional design to see how they can best be protected in a world in which others are more than willing, if given half a chance, to interfere with the well-being of others.

The crisis of human rights is neither culturally nor geographically limited to certain prescribed race, religion, creed or ethnic boundaries. It is a perennial problem that has long attracted the attention of social crusaders, legal luminaries, human right activists, philosophers, institutions and organizations; both local and international across the globe. At the state level, many countries of the world in their recognition of the past gross abuses of human rights in their respective states have set up commissions to look into the past cases of abuses in search of truth, reconciliation and justice. This is evident in truth commissions in Argentina, Chile, Guatemala, South Africa and Uganda among others. The case is not much different with Nigeria. This crisis of rights violations has been compounded by the increasing relevance of indigeneity in Nigeria.

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Indigeneity constitute serious issue affecting the survival of Nigeria as an entity. There is a deep attachment of Nigerians to their states of origin, regardless of whether or not they are residing there. The importance of indigeneity is manifesting in employment, recruitment, admission, elections, appointments and patronage. The way and manner the Nigerian nation came into being encouraged and promoted indigeneity which constitute problems for citizenship. The people who inhabited the different geographical areas now constituting Nigeria saw themselves differently and were independent of one another. The various nationalities had existed as autonomous socio-cultural, political and economic units. But the 1884/85 Berlin Conference started the unholy process of bringing together discrete and diverse nationalities under one state umbrella without the consent of the people concerned. Owing to this development which culminated in the amalgamation of the Southern and Northern protectorates by Lord Lugard in 1914, the Nigerian peoples so brought together saw the emergent state not only as alien but also as a forced contraption. Instead of being patriotic by supporting and respecting the state, they see it as an abstract object, a European formation and therefore an evil arrangement that denied the people of their freedom. Because of this enduring notion of the Nigerian state by the people, they have had recourse to their various indigenous societies which to them are capable of protecting and guaranteeing their individual rights, privileges and advancement in the Nigerian state.

All Nigerians are overprotecting their indigeneity because of the attractions it offers. What is noticeable in the country is that indigeneity is placed before national citizenship. Despite constitutional provisions that emphasize the importance and relevance of citizenship, particularly as regards the rights and obligations associated with it, indigeneity has consistently thwarted citizenship. Citizens are facing undue deprivation within the country contrary to Section 42(2) of the 1999 Constitution that says *"No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth"*.

The paper was poised to undertake a theoretical evaluation of application of natural rights in Nigeria giving the contradictions associated with constitutional recognition of divisive practices like indigeneity and limitations imposed on natural rights by citizenship.

A qualitative documentary analysis was adopted as method of data gathering and analysis. Documentary analysis is a systematic procedure for reviewing or evaluating documents to elicit meaning, gain understanding or

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develop empirical knowledge. It involves finding and making sense of data contained in documents and very applicable to case studies. The method has an advantage of providing data concerning historical events to help researches understand the specific roots and issues concerning particular phenomena as well relying on data collected by other researchers and not to generate new ones (Bowen, 2009). However, due to its reliance on data already generated, it should be noted that a certain degree of bias can occur, no matter how much is done to control it and the perceptions of the author of this project on the subject matter can be influenced by other researchers' views. The main source of data in this work is the natural rights theory and its limitations by the concept of indigeneity in a political setting. The works on natural rights provides a philosophical appraisal of the idea of rights, issues and problems associated with natural rights in the ancient and contemporary epoch as well as our immediate environment.

Literature Review and Theoretical Background

The Greco-Roman Philosophers laid foundation for the flourishing of the concept of natural right and citizenship in their conceptualization of natural law and natural rights theories. The elements in natural rights theory today were introduced by Plato and Aristotle. In his Republic, Plato for example notes the "equal respect for all citizens (Isotimia), equality before the law (Isonomia), equality in political power (Isokratia), equality in Suffrage (Isopsephia), and equality in civil rights (Isopoliteia). They advanced an egalitarian framework for the next development of natual rights" (Plato 1992). Again, by Plato and Aristotle's emphasis on the universality of justice and morality, the stage was set for individual act of justice, which underlies the doctrine of natural right since the right of man and justice are inseparable. The post-Aristotelian philosophers particularly the stoics also advanced the course of natural rights and citizenship. They promoted the concept of human freedom and laid emphasis on the equality of all men. Their development of moral universalism as against the sophist's theory of moral relativism becomes a strong support for rights as demonstrated by Cicero, a notable stoic. In his work On the Commonwealth, Cicero noted: ...

> *Since there is nothing better than reason and since it exists both in man and God, the first common possession of man and God is reason. But those who have reason in common also have right reason in common. And since right reason is law, we must*

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> *believe that men have law also in common with gods. For while the other elements of which man consist were derived from what is mortal and are therefore fragile and perishable, the soul was generated in us by God. But out of all the materials of the philosophers discourse, surely there comes nothing more valuable than the full realization that we are born for justice and that right is based, not upon men's opinions but upon nature* (Cicero 1929).

In the medieval period where there was great fusion of philosophy and theology, the concept of natural rights becomes theocentric. St. Augustine in his City of God notes that "He (God) did not intend that his creatures, which were made in His own image, should have dominion over anything but the irrational creation not man over man, but man over beasts (St. Augustine 1958). This was the period when the doctrine of Natural Law became strong and was linked to God or eternal law. For them, natural rights are rights that God gave to man and are found in natural laws and they are also universal, objective and applicable to human beings as equal creatures of God.

In the modern period, the theory of natural rights found expression in the works of Thomas Hobbes and John Locke, J. J. Rousseau, Jeremy Bentham, J. S. Mill, A. Tocqueville, Paine, and Immanuel Kant amongst others. In the first place, the theory of natural rights and human rights are based on liberal theory of the origin of the state from the Social Contract. According to this theory, certain rights were enjoyed by man in the state of nature, that is, before the formation of civil society itself. These comprise the natural rights of citizens, which must be respected and practiced by the state. In his Leviathan, Thomas Hobbes (1588 – 1679), set out his doctrine of modern natural right as the foundation of societies and legitimate governments. He draws a gloomy picture of the state of nature and depreciates natural rights as the freedom of the stronger to oppress the weaker. He therefore postulates an unconditional surrender of natural rights when civil society is formed. According to him, society is a population beneath an authority, to whom all individuals in that society surrender just enough of their natural right for the authority to be able to ensure internal peace and a common defense. Hobbes' thesis agrees that man, in the state of nature, possesses freedom and equality (Hobbes 1958). Hobbes acknowledged the existence of rights, but holds that the sovereign is

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the sole determinant of human rights.

Meanwhile John Locke (1632 – 1704) one of the most influential thinkers in the modern period was the most ardent champion of natural rights. His most celebrated work Two Treatises of government Locke describes the current condition of the civil government in the First Treatise, while in the Second Treatise; Locke demonstrated his justification for government and his ideals for its operation. Locke also in the Second Treatise, advocated that all men are equal and that each should be permitted to act as long as he doesn't harms another (Locke 1980). Using these foundations, he continued to make a classic justification for private property by declaring that the natural world is the common property of all men, but that any individual could appropriate some bit of it for himself by "mixing" his labour with the natural resources. In his Lockean Proviso, Locke stated that the right to take goods from the natural commons is limited by the consideration that there was still enough and as good left, and more than the yet unprovided could use. John Locke went a step further by trying to specify what these natural rights are. For him, there are three fundamental natural rights as provided by the natural law. Such rights, Locke insists, are safeguarded by social contract. These rights are right to life, liberty and property. He considers them as natural to man. For him, these rights are the bases of the social contract and any attempt to violate these rights should be resisted by all means.

In regards to equality, Lockean concept of equality embraces the distinction of the following types of equality as sanctioned by modern usage as shown in Wielftly P. A. work "Equality" published in New Catholic Encyclopaedia in 1967. They include natural equality based on the equal possession of the same nature as shown in essential characteristics shared by all the members of a species; political equality, a status of parity among citizens, which implies the same fundamental rights and privileges of political participation and the exclusion of partiality in the application of the law; "Social equality is the negation of all social class distinction within the totality of a society. Wielftly P. A. further notes that the satisfaction of equality in socio-political order implies the exclusion of all forms of arbitrary and irrational partiality and discrimination in human interrelations. That true egalitarianism is attained in a society when there is freedom from psychological, legal, social and economic pressure to remain permanently in a fixed class (Wielfly 1907).

Another influential modern thinker on natural rights was Jean

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Jacques Rousseau (1712 – 1778), in his works "The Social Contract" and "Discourse on Origin of Inequality"; Rousseau draws a fascinating picture of the state of nature and glorifies natural rights. Nevertheless, he postulates that these rights become irrelevant in civil society. They are therefore surrendered as the price of civil rights (1968). In effect, both Hobbes and Rousseau do not think that natural rights would be maintained by the state. Contrary to Locke's position that man surrendered only some of his natural rights, particularly the right to be judge of his own acts on the condition that his fundamental natural rights, that is, the rights to life, liberty and property shall be protected by the state. The 18th Century German philosopher, Immanuel Kant in his work Groundwork of the Metaphysics of Morals, introduced reason as a general and distinguishing attribute of man, upon which morality is to be based.

In his theory of the autonomy of the will expressed in his ethical theory of categorical imperative, Kant holds that natural rights are those rights we decide to give to ourselves as equal and autonomous rational beings. For Kant therefore, natural rights have no divine origin as held by the medieval thinkers but originate from the will of man as a rational being. He therefore laid the foundation and constitutes a cardinal pillar in the development of the will theory of natural rights. Kant's theory brings forth objectivity into moral discourse and has succeeded to tend our minds off religious and quasi-religious basis for natural rights, consequently making it possible for all to see natural rights as something that transcends religious sects, cultures and personal interests (Kant 1964). The contemporary period witnessed a flourishing of works on human rights and equality.

For Jeremy Bentham, in his work titled Anarchical Fallacies, Bentham rejected the concept of natural rights of man as rhetorical nonsense, nonsense on stilts (Bentham 1948). He rejects the doctrine of natural rights as unreal and ill-founded. Bentham condemns natural rights as an invention of fanatics, which are dogmatic and unintelligible, devoid of reasoning. About their upholders, Bentham remarks "Instead of examining laws by their effects, instead of judging them as good or as bad, they consider them in relation to these pretended natural rights; that is to say, they substitute for reasoning of experience the chimeras of their own imaginations" (Bentham 1962). Again Bentham's theory of human rights falls under the utilitarian tradition in this regard. As a theory, the utilitarian laid emphasis on the beneficial consequences of an action as the source of value. They argued that rights arise independently of social utility from agreement they

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made, from their dignity and autonomy as human beings. The individual's interest ceases to exist as soon as it is incorporated in the utilitarian calculus and so fall under legal jurisdiction. As such his view is also expressive of the logical positivist position. It is thus evident that Bentham advanced the course of legal rights with a focus on political reality and to repudiate the imaginative character of natural rights theory.

Meanwhile, Thomas Paine (1737–1809) in his Rights of Man published in 1791 enunciated the theory of natural rights on teleological basis. Paine rejected the doctrine of the social contract as it was "eternally binding and hence, a clog on the wheel of progress. He insisted that every generation should be free to think and act for itself. But rights to "liberty, property, security and resistance of oppression", which are the proud possessions of man in civil society derive their sanction from the natural rights pre-existing in the citizen (Paine 1967). Jean Paul Sartre in his contribution as found in his work Existentialism and Humanism bring out an idea of human rights which is linked to responsibility and choice. Contrary to the traditional belief that our choices are by-products of the society we lived in. Sartre disagrees and holds that each man must encounter and confront himself and his situation in the world, and that only him can act on it. Therefore, what we chose to do in these moments in life quite literally define us. That is, man is nothing else but that which he makes of himself (Sartre 1973). Sartre concludes that man is condemned to be free. Not only are we the only ones able to choose, but also our choice is inescapable. For the refusal to choose is in itself a choice.

On his part, Karl Marx in his Communist Manifesto and Economic and Philosophic Manuscript published in 1884 advocated nothing less than the abolishment of personal property rights and the institution of forced labour. He argued that these would in fact help man restore his dignity, worth and self (Marx 1964). The only thing that would suffer, he felt was the very bourgeois individuality, bourgeois independence and bourgeois' freedom, which perpetuated the capitalistic system so harmful to the masses. On the other hand, Marx's arguments for the abolition of these traditional Lockean freedoms has encouraged the support of social or cultural rights, because they represent the whole of society are felt by some philosophers to be more important than the rights of a single individual at least in many senses. Indeed, the repressive communist government of Stalinist Russia and Maoist China were ostensibly founded upon some of the same principles as the Universal Declaration of Human Rights, whose

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preamble argues for the "freedom from fear and want" of the "common people" as opposed to emphasizing the rights of the elite owners of the means of production (Marx 1964).

Mack Eric in his work Egoism and Rights published in 1973, developed theory of rights in which he showed that natural rights derived from egoism will yield the results (Mack 1973). Mack's concern with the compatibility of egoism and natural rights is but one of the phases of the ongoing discussion about the relationship between individualism and the moral foundation of the liberal or libertarian political order. While attempting to avoid giving his theory of rights a quasi-utilitarian defense, Mack has also made room in this theory for the teleological features of human action, thus combining elements of normative theories generally held to be antagonistic. As a follow up from Mack's theory of rights, Robert Nozick developed a Transcendental Rights Theory. In his Anarchy, State and Utopia he did not set out to prove that human beings have certain Lockean rights. He proceeded instead by positing these rights and examining whether the kind of social and political system that flows from such rights (if implemented) accords with our moral intuitions better than alternative systems (Nozick 1974). Nozick held that it is problematic when governments claim a monopoly on the protection and preservation of rights. That is, they risk violation of the rights by subjecting all to their exclusive administration of justice and their idea of due process. Hence, he proposed a minimal state which would involve less of a risk of rights violation than leaving the protection and preservation of rights in the hands of people at large.

Placide Tempels in his work "Bantu Philosophy" demonstrated however, that the African notion of human right is deeply rooted in African ontology. His words:

> *It is in defense of their rights that non-civilized people show their personalities to best advantage, because their rights like their religion, are built upon the ultimate essence of humanity upon their conception of the world and upon their philosophy* (Tempels 1969)

Placide Tempels sees the African conception of rights as something that is intrinsically intentioned with their world views and belief systems. Corroborating this fact, J.A.I Bewaji in his work "Human Rights: A Philosophical Analysis of Yoruba Conceptions" notes that human rights were very

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well enshrined in the culture and tradition and customs of indigenous Yoruba society before colonialism and amalgamation with Nigeria and the independence of Nigeria, (Bewaji 2006). Meanwhile, Chancellor Williams in his work titled The Destruction of Black Civilization published in 1987 noted that various African traditional, constitutional and customary laws shows that Africans have both the concept of human rights and specific provisions of human rights even before Europe became civilized (Williams 1987). He outlined not less than twenty specific human rights that are arguably more refined than what western philosophers thought existed in African traditional societies.

Furthermore, Benedict Michael in his work The Tiv Concept of Human Rights set to prove not just the existence of human rights in Africa, but also the nature, scope and dynamics of such rights in Tiv society. He noted that unlike the western conception of rights which is based on abstract individualism without the recognition of duties, Tiv conception of human rights encompass both rights and obligation, which provides the community with cohesion and strength (Michael 2005). This notion of right, built largely around the conception of duty, requires the individual to place the community and the common good before individual satisfaction. David Hume objected to the existence of natural rights of man. David Hume held that natural rights and natural law were unreal metaphysical entities. He questioned the permanent validity of human rights since they are not established by any legislation. In his work "Inquiry Concerning Human Knowledge" Hume rejected anything metaphysical as non-existence. He further notes that such public assertions on Human rights would rather influence people to take revolutionary action and also lead citizens to think they could have things that they could not.

For the Marxist, the whole idea of natural rights is the product of the bourgeois society, at the point in history when it was on the verge of collapsing. In his work The Jewish Question, Karl Marx saw the rise of human right on historical context and he is wholly dismissive of all claims made by the bourgeois freedom and on the revival of natural right as its aim, that is; the liberation of man from the oppressive and restrictive feudal economic and social structure. For Marx, all rights and liberties in bourgeois is simply the fact that the individual aspiration and interest conflicts are limited by the aspiration of others, in capitalist societies. Marx concluded that human rights…are simply the façade of the capitalist system in the new unified society they have become utterly irrelevant".

P.O. Bodunrin an African philosopher also rejects the concept

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of human rights that sees it as something immutable, imprescriptible and universal. For him,

> *If there is anything intrinsic to man in this sense (that is, in the sense that it will be impossible for the government to deprive him of that right which he has) it could not be such a thing as rights. (Bodurin 1987)*

He further argues that the concept of human rights grows with the development of human moral consciousness. But human consciousness itself develops in response to human existential predicament. He concluded that there are no natural human rights which human beings are automatically conscious of by reason of their humanity, (Bodurin 1987).

The study relies heavily on natural rights theory. Theory of natural rights which are basically moral ideas were originally derived from natural law which in Christian civilization had to do with the moral character given by God to his creation prior to the enlightenment period. These rights include rights which are unalienable like the right to life, liberty, self-preservation and pursuit of happiness. These rights were considered as being endowed on man by his creator which is then protected by governments which are instituted by men (Langlois in Goodhart 2013). However, this Christian theme gradually lost its hold and the reason of man gradually replaced the word of God as the highest authority during the enlightenment period which led to new theories being postulated by philosophers. Foremost among these philosophers was John Locke (1689).

John Locke argued that all individuals were endowed by nature with the inherent rights to life. Liberty and property which were their own and could not be removed or abrogated, by the state. In his publication 'The Second Treatise of Government', Locke declared that man by nature is free, equal and independent and as such no one can be put out of his estate or subjected to the political power of another without his consent. As such everyone is entitled to live once they are born, to do everything they want as long as it doesn't conflict with the right to life and everyone is entitled to own all they create or gain through trade and gift as long as it doesn't conflict with the first two rights (Langlois in Goodhart 2013). Locke goes on to say that a 'state of nature' existed prior to the creation of society in which individuals fended for themselves and looked after their own interests and in this

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state each individual had a set of natural rights including the right to life, property and liberty which are part of our nature because they give humans a certain moral worth or status and that when individuals formed social groups, their main aim is to protect these rights more effectively but they do not however renounce their rights (Messier 2011).

Locke further reasserts man's natural rights by arguing that the state of nature as a state of equality in which no one has more power over another and all are free to do as they please. That the state that all men naturally in, is a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man (Messier 2011). Locke however notes that this state of liberty is not a licence dispose of others as one sees fit as we are all equal by nature.

Locke also postulated that where the ruler of the state broke the social contract by violating the natural rights of the individual, subjects were free to remove the ruler and replace him or her with a government which was prepared to respect those rights. (Kumar, A. 2002) King James II, by violating the natural rights of his subjects, had forfeited his right to rule and had legitimated the consequent change in government (the English Glorious Revolution of 1688). From the Lockean view of natural rights, two things are evident. First the individual is an autonomous being capable of exercising choice. Secondly the legitimacy of government depends not only upon the will of the people, but also upon the government's willingness and ability to protect those individual natural rights.

Discussion of Findings

Rights seek to pursue human dignity which is itself the foundation of human rights. Human dignity involves acting knowingly and willingly i.e. acting freely and responsibly. In practice, rights are usually classified into various categories. Some of the major classifications made by some scholars separate natural rights e.g. right to life, from political rights e.g. right to vote while civil rights include the right to own private property. There are also social and economic rights identified and practiced in reality.

A careful consideration of all these sublets of rights will reveal that they are more widened in scope than earlier notion of natural rights. In view of the importance of the conception of natural rights, it assumed official recognition by the United Nations in 1948. On the 10th of December 1948, the general assembly, for the first time in history, modified natural rights into human rights and adopted it as a universal declaration; the declaration

consists of 30 articles covering civil, political, economic, social and cultural rights (IBHR 1978). This proclaimed universal declaration is designed to be a common standard of achievement for all people and all nations. The question here is; to what extent are member states upholding these human (Natural Rights) as stated in the charter? There can be no discussion of limitation to rights without violating the right of another man. It cannot be possible to visualize a world totally devoid of human rights: such a world will be full of chaos. The most common situation found around is a middle point between lack of and presence of human rights. Natural rights have been abused at various levels from one society to another. An instance is the abolition of Property rights by the Socialist nation of Eastern Europe; this does not imply that other parts of the Human rights e.g. right to life etc are also absent in such society. No society can survive without at least some iota of human rights for its citizens.

Though there is no way we can creditably expose the abuses of human rights in Nigeria without referring to the mode of governance operating as at the time of such unbridled human rights violation such as abuses associated with the military rules which also in varying degrees happen under democratic regimes, practice of indigeneity and status of dual citizenship by Nigerians of the federal government and their respective component units in Nigeria is a manifestation of abuse of natural rights.

Firstly, there have existed various situations of natural/human right violations in Nigeria as a result of the indigeneity conundrum. Indigeneity is simply a discriminatory concept employed in the Nigerian state to distinguish between the indigenes or natives of a state or locality and those who are referred to as non-indigenes or settlers. As argued by Omotoso (2010), an Ebira man living in Ekiti State for over 25 years making necessary contributions to the development of the state is not regarded as an indigene of the state. Irrespective of the number of years he has spent in Ekiti State, he and all members of his family are still regarded as settlers and non-indigenes hence, they cannot have access to or benefit from what is purely reserved for the indigenes, even if such indigenes have not been in Ekiti State for over 30 years. For Abdullahi Adamu (ex-executive Governor of Nasarawa State), indigeneity is a biological term that has assumed serious social and political meaning in Nigeria and around the world.

Secondly, Indigeneity is used in Nigeria to distinguish natives of a particular place from other Nigerian citizens found in that locality. It is also used to confer special privileges which are beyond the reach of non-

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natives (Ibid) on the natives. For instance, citation of private property or businesses is often determined by indigeneity or nativity of a place. Natives enjoy protection of ownership of private properties and businesses while non-natives pay extra costs to achieve thesame; a practical inertia is the "Omo Onile" syndrome or "Area Boys" debacle in relation to property development and ownership in my major cities and towns across Nigeria. In market structures and operation, ethnic or native colouration is obvious, there Igbo dominated markets in Lagos such as Alaba International market at Ojoo local government and Ladipo market at Oshodi-Isolo Local Government, different from Hausa dominated markets such as Ketu/Mile 12, Yaba/Oyingbo and Agege, these are also different from numerous other Yoruba dominated markets.

Thirdly, there is no gainsaying the fact that Nigeria is a pluralistic multi-national state. Hence, there is deep attachment of Nigerians to their states of origin, regardless of whether or not they are residing there. The concept of the Nigerian state does not offer much attraction to Nigerians; what give them hope are mostly their ethnic groups to which they owe more allegiance and loyalty. For instance, regardless the number of years spent in a location other than place of origin in Nigeria, people still refers to their place of nativity as home. The Igbos in Lagos, the Yorubas in Aba, the Hausas in Ibadan all the share the orientation of home-going during major festivities and such orientation is patterned by capital repatriation evidenced by the culture of earning a living somewhere and building infrastructure in native community, even when such infrastructure lacks economic or utility sense. A trip to remote communities in the South Eastern Nigeria exposed gigantic mansions built at the heart of villages which are only put to use during charismas/new year visit by the owners. The amount of economic returns or sense of utility such edifice could have attracted if cited in Lagos or Onitsha can only be imagined. The sense here is that, people do not feel ethnically fulfilled until they become home owners in their respective communities of origin even if it takes to remain tenants elsewhere (where the income is earned).

Fourth, some of the founding fathers demonstrated aptly the "notion of no Nigerian nation" in the consciousness of Nigerians. For example, Obafemi Awolowo noted that the Nigerian state is a mere geographical expression (Obafemi, 1947) and Sir Ahmadu Bello (1962) observed that the establishment of the Nigerian state is the mistake of 1914. These notions about the Nigerian state are still as real as those nationalists saw them. In corroborating this, Osoba and

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Usman noted about indigeneity in Nigeria thus:

> *…state citizenship (i.e., indigeneity) is even more stringent and biological determined than national citizenship in the sense that it does not make state citizenship comparable by registration or naturalization… no matter how long a Nigerian has resided in a state of Nigeria of which none of his parents is an indigene, such a Nigerian cannot enjoy the right to participate fully in the public life of that state, (Osoba and Usman 1976).*

It needs to be noted that the introduction of regionalism by the Richards Constitution in 1946 and the subsequent state reorganizations in 1963, 1967, 1976, 1987, 1991 and 1996 in the country have not only encouraged sectional consciousness, loyalties and sentiments but have also made these states centres of attraction to Nigerian citizens. For instance, despite the provision of the constitution which guaranteed political rights of contesting election by any citizen of Nigeria in a place he has resided for fifteen years, rule of indigeneity or nativity still play vital role in access to that rights. For instance, how possible is it for an Igbo born and brought up in Lagos to become Governor of Lagos State?, how permissible is it for a Yoruba man whose grandparents were born, brought up and resided in the North for centuries to contest election into the Senate representing a state in the North? How conceivable is the idea of an Hausa man who had resided, doing business and paying taxes for over thirty years in the East to become Chairman of local council in any of the Eastern states. Rather, it takes Governor Rauf Aregbesola who had resided in Lagos all his life and even became Commissioner of Works for eight years under the administration of Senator Bola Ahmed Tinubu to retrace his origin to Ilesa, Osun State as to fulfil his ambition of becoming a state Governor. Chief Rochas Okorocha lived most of his philanthropic life in the Northern Nigeria; following three woeful attempts at becoming Nigerian President he had to settle for the governorship of Imo State, his state of origin. None of the states in the North could give him such unimaginable political accommodation giving the peculiarity of Nigerian political cultural orientation premised on indigeneity.

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Fifth, Indigeneity is seen as a weapon commonly employed by various groups depending on the degree of scarcity of resources and the forms of competition that may arise. In emphasizing the import and centrality of indigeneity to the Nigerian state, Nwosu (2000) attributed it to the cake sharing syndrome and the distributive pressures associated with Nigerian federalism. Indigeneity is a weapon of the elite for access to the resources of the state. In other words, indigeneity has become a powerful political weapon in the hands of the political elite in the struggle for state power and resources. As Nwosu eloquently put it:

> *The political elite has fanned religious and ethnic Factors in the pursuit of their selfish and acquisitive interests. This attitude of the elite, fuelled by distributive pressures of the cake sharing syndrome of Nigerian politics, underpins the perennial divisive crises of our nation concerning revenue, federal character, the struggle for new states… all of these are distributive centrifugal forces in Nigeria's federalism (Nwosu 2000).*

The ethnic elite ride on the constitutional concepts of federal character and quota system reinforced by indigeneship to negotiate for shares in national resources and patronage. The pursuit of individual and group interest or goals is at the heart of ethnic and sectional sentiments in national engagements mostly by the elites. The likes of the leaders like Edwin Clarke, Frederick Fasehun, Ralph Uwazuruike, Tanko Yakassai and the likes, rode on ethnic sentiment and use of sectional bias to rise to national limelight. How truly representative they are of their vulnerable tribal population constitute a thesis on its own. These and other individuals rose to stardom and affluence waging war with weapon of ethnicity and primordial sentiments associated with indigeniety.

Sixth, Nigerians do not have any right to indigeneity outside the state of their parents' birthplace. Owing to this phenomenon, many Nigerians who are linguistically and culturally assimilated into a community different from their parents own are denied indigeneity of the place, irrespective of the number of years of living in the place. The various Nigerian democratic Constitutions of 1979,

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1989 and 1999 provided legal basis for indigeneity. For example, Section 318 (1) paragraph (vi) of the 1999 constitution states, inter alia:

> *Belong to or its grammatical expression when used with reference to a person in a state refers to a person either of whose parents was a member of a community indigenous to that state.*

In this connection, Daniel Bach (1989) observed Nigeria's younger generation is being socialized into indigeneity, state and local government identity as crucial parameters for the definition of their future prospects. In Nigeria, because of the issue of indigeneity, long-term residency does not guarantee any serious commitment to one's state of residence. Irrespective of the years of residence, one cannot freely participate or benefit from what is indigenous to one's place of residence once it is not one's state of origin and this development raises fundamental issue about citizenship appeal in Nigeria. With regard to this, Raufu (1998) noted that:

> *Long-term residence, cultural assimilation into the host community and a clear commitment to one's state of residence are not recognized criteria for membership of a state. This amount to constitutional ossification of strangerhood, contrary to a historical dynamic of inter-group relations in many Nigerian communities. While foreigners can and become Nigerians, indigenous Nigerians can hardly belong to any state of the federation other than those to which either of their parents are indigenes of. As residents, strangers or non-indigenes, many Nigerians are then denied many basic rights which should ordinarily be guaranteed to them by our common citizenship.*

Seventh, there is no doubt that many Nigerian citizens are being denied basic rights that are guaranteed by the constitution because of the issue of indigeneity. While foreigners are allowed to naturalize after spending some years and become citizens of Nigeria, enjoy those rights and privileges reserved for free born Nigerians, such opportunities are not given to Nigerians living in states other than their state of origin. This has limited

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overall sense of Nigeria citizenship. The major factor that propels indigeniety and limits universality of citizenship in Nigeria is the constitution of 1999 as amended which recognised the principle of federal character and quota system as basis for public life.

Conclusion

The paper established that the pace of natural rights as indeed citizenship has been limited in Nigeria over time. It was argued that the theoretical orientation of natural turned civil rights cannot be juxtaposed giving the reality of the Nigerian practice. The seeming contradictions in the Nigerian 1999 Constitution are actively promoting the problem of citizenship in Nigeria. The constitution, as earlier indicated in this study, guarantees fundamental human rights and also guides against discrimination of any form. Unfortunately, the same constitution is encouraging discrimination, particularly on the basis of the state of origin under the guise of federal character and quota system, among others. For example, the concurrent legislative list openly encourages states to freely discriminate and operate distinctions between their indigenes and non-indigenes in job placement, admission to schools and colleges, payment of school fees, etc. Apart from this to benefit from federal service, Nigerian citizens are being discriminated against on the basis of federal character, quota system, catchment area and state of origin.

The point being emphasized in this paper is that there exist contradictions between the formal provisions of the constitution on citizenship rights and the practical applications of these rights because of the labels of indigenes, natives and settlers. Ibrahim and Igbuzor (2002) observed that these issues have tended to undermine the very essence of Nigerian citizenship in the sense that one is not really a citizen of Nigeria but rather a citizen of the place to which he/she is indigenous.

The fundamental issue arising from the conclusion of this study is that, if universality of citizenship cannot be established in Nigeria, the state in Nigeria also lacks legal merit and moral persuasion. The ground assumption in the modern conception of state is existence of "relationship of reciprocity" i.e. state and citizens. What this infers is that, there is no state without citizens or put differently, state makes no legal sense without those who enjoy legal reciprocal relationship from it, i.e. the citizens. In other words, if state citizenship is in contention in Nigeria, the State itself is in contention. What appear legal, moral and real is that, there are citizens of 36 smaller states which lack separate sovereignty. Nigeria is a dialectic problem.

Lastly, the paper recommends a fundamental theoretical rethink of

rights practice in Nigeria, a need for constitutional reform that will whittle down all forms of discrimination and limitation to natural and civil rights. All sections of law that give recognition to indigenity practice should be abrogated including federal character and quota system within the federal space in Nigeria.

Any practice that promotes the dignity of one through the demystification of others should be discarded. The nature and status of man has a moral worth which gives people dignity or a basic moral status and the ability to express it thereby making people aware of their moral worth and so they can express the same towards another person. This dignity provides humans with the intellectual ability to reason or think and the internal acknowledgement or recognition of the moral worth of one's actions to decide on what is wrong and what is good which makes us different from animals. The dignity is inherent to man's nature or beings as it seeks to explain that human rights cannot be deduced or enumerated, neither are they acquired nor earned, but are part of human nature by virtue of humanity.

Nigeria will qualify to be regarded in theory as a single sovereign state with foundation rooted in civil rights and citizenship if the policy and practice of indigeneity cease to be the basis of public life.

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