ISSN Prints: 2616-1264 Online: 3027-117

On Aquinas' Concept of Law and its Implications on Law and Lawmaking in Nigeria

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Abstract

It is undeniable that throughout philosophic history, the question of "what is law?" has remained contestable. From the ancient to contemporary period, there have been divergent views regarding the concept of law. To build on this intellectual discourse, St. Thomas Aquinas in his *Summa Theologica* formulated his theory of law. Aquinas established that law is "…an ordinance of reason for the common good, made by him who has care of the community." In view of this understanding of law, this paper elucidates Aquinas' concept of law in order to situate his idea of law on law and lawmaking in Nigeria. The study is a qualitative research. Data were sourced from primary and secondary sources. The paper used the expository and evaluative methods. The expository method uncovered the idea of law in Thomas Aquinas' thought while the evaluative method examined his notion of law in order to situate its implications. The study found out that to Aquinas, law is borne out of practical reason and necessarily projects the good of everyone. It is morality toward common good. Anything short of this is unjust and not qualified to be a law. In contrast, it is been observed that in Nigeria, law and lawmaking is largely designed in a way that favours a select few so that law is served differently to different people. Regardless, Aquinas's idea is been challenged on the basis that not all common good that are practically reasonable are morally right. However, the study concluded that Aquinas' concept of law is considerable for law and lawmaking since it has grounds of influencing a more stable, socially, economically and ethically sound society.

Keywords: Aquinas, Concept of Law, Law Making, Nigeria

Introduction

In my experience as a Nigerian citizen, I have overtime, witnessed the law been overturned in order that it favours the rich. The same law, binding a situation is been served differently to different individuals, depending on who is involved. Those who make the laws break the law and go unpunished, wherein, a commoner commits the same crime and is being judged and sentenced to prison. Evidently, law and lawmaking in Nigeria today has become a situation synonymous to what Thrasymachus describes as whatever promotes the advantage of those who have political power. Worried by this situation, the researcher finds the thoughts of Thomas Aquinas on law as worth evaluating in order that its implications are being uncovered to bear on law and lawmaking in Nigeria today.

Thomas Aquinas establishes that law remains an ordinance of reason for the common good, made by him who has care of the community, and promulgated. This indicates that, law is an ordinance of reason as it must be reasonable or based in reason and not merely in the will of the legislator. It is for the common good because the end or *telos* of law is the good of the

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community it binds, and not merely the good of the lawmaker or a special interest group. It is made by the proper authority which has care of the community, and not arbitrarily imposed by outsiders. It is promulgated (communicated) so that the law can be known. It is thus in this line of thought that this paper seeks to evaluate Aquinas' concept of law to establish its implications on law and lawmaking in Nigeria today.

Conceptual Clarification

This section clarifies on the concept of law; especially as been defined by the scholar under discourse.

Law: Many philosophers and legal scholars have tried to answer the essential but difficult question, "what is law" and hence law is not Mathematics, a precise definition has remained unattainable. However, Aquinas defines law as "…an ordinance of reason for the common good, made by him who has care of the community…" (qtd in Anyam 18). This means that all laws made must be in view of projecting the common good of the generality of the society so that the law does not have to favour only a few persons. In this definition, if the law made does not have an intended end to be that of a common good, then it is not law. It must be what addresses the preferences and issues bothering the good of everyone to be qualified as a law. This line of thought forms the operational pattern for this discourse as would be seen in this work.

Understanding the Concept of Law

For every human relationship or interaction to function effectively and smoothly, there must be some rules or codes regulating their behaviour or action. Long before the Code of Hammurabi set the law for ancient Mesopotamia, people subjected themselves—sometimes by cooperative agreement, sometimes under threat of force— to rules that would enable social and economic activities to be ordered. As societies evolved from close-knit kinship groups to larger and more diverse communities with more complex activities, the need for more formal rules increased (Fukuyama 31-44).

In modern States, law serves three critical governance roles. First, it is through law and legal institutions that States seek to order the behaviour of individuals and organisations so that economic and social policies are converted into outcomes. Second, law defines the structure of government by ordering power — that is, establishing and distributing authority and power among government actors and between the State and citizens. And third, law also serves to order contestation by providing the substantive and procedural tools needed to promote accountability, resolve disputes peacefully, and change the rules.

Damian Anyam, in his *Understanding Social and Political Philosophy* states that law does not operate in a vacuum as it has to reflect social values, attitudes and behaviour. Societal values and norms, directly or indirectly, influence law. Law also endeavour to mould and control these values, attitudes and behavioural patterns so that they flow in a proper channel. It attempts either to support the social system or to change the prevalent social situation or relationship by its formal processes. Law also influences other parts of the social system (18). Law, therefore, can be perceived as symbolising the public affirmation of social facts and norms as well as means of social control and an instrument of social change. All collective human life is directly or indirectly shaped by law. Law is, like knowledge, an essential and all pervasive fact of the social condition. A minimum amount of legal Orientation is indispensable everywhere.

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Many philosophers and legal scholars have tried to answer the essential, but difficult question, "what is law?" In his 1881 book, *The Common Law*, US Supreme Court Justice Oliver Wendell Holmes stated that " [t]he Law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics" (Oliver 1). Accordingly, because the law is not math, a precise definition may be unattainable. Aquinas defines a law as an ordinance of reason for the common good, made by him who has care of the community, and promulgated (ix). The Law is an ordinance of reason because it must be reasonable or based in reason and not merely in the will of the legislator. It is for the common good because the end or *telos* of law is the good of the community it binds, and not merely the good of the lawmaker or a special interest group. It is made by the proper authority that has "care of the community", and not arbitrarily imposed by outsiders. It is promulgated so that the law can be known.

More explicitly, "Law," implies a science or system of principles or rules of human conduct, answering to the Latin jus as when it is spoken of as a subject of study or practice. In this sense, it includes the decisions of courts of justice, as well as acts of the legislature. The judgment of a competent, court, until reversed or otherwise superseded, is law, as much as any statute. Indeed, it may happen that a statute may be passed in violation of law, that is, of the fundamental law or constitution of a state; that it is the prerogative of courts in such cases to declare it void, or, in other words, to declare it not to be law.

State-enforced laws can be made by a collective legislature or by a single legislator, resulting in statutes, by the executive through decrees and regulations, or established by judges through precedent, normally in common law jurisdictions. Private individuals can create legally binding contracts/ including arbitration agreements that may elect to accept alternative arbitration to the normal court process. The formation of laws themselves may be influenced by a constitution, written or tacit, and the rights encoded therein. The law shapes politics, economics, history and society in various ways and serves as a mediator of relations between people.

Theories of law

Natural Law Theory

Natural law theory is the earliest of all theories. It was developed in Greece by philosophers like Heraclitus, Socrates, Plato, and Aristotle. It was then followed by other philosophers like Gairus, Cicero, Aquinas, Grotius, Hobbes, Locke, Rousseau, Kant, and Hume. The natural law or the law of nature refers to normative properties that are inherent by virtue of human nature and universally cognisable through human reason. Historically, natural law refers to the use of reason to analyse both social and personal human nature to deduce binding rules of moral behaviour. The law of nature, being determined by nature, is universal (Anyam 22).

Ancient precursors to natural law appealed to nature (*physis*) as morally prior to social convention and positive law (*nomos*). Plato's *Gorgias* argued against Callicles' understanding of natural justice as the "law of nature" by which the strong in the rule the weak (483e). The *Republic* examined the 'natural justice' that exists in the properly ordered soul and city-state. Aristotle distinguished actions that are 'legally just' from those that are 'naturally just (*Politics*1134b I8). Cicero's *De Re Publica* first advanced the explicit claim that the "natural law" provides universal moral principles obliging not only Roman citizens but all human beings. He opposed the claim of what later came to be called 'moral positivism', according to which

binding moral claims are not discovered in human nature but rather are "posited" by the will of some authority. Outside such a will, positivism holds, there is no binding moral standard.

Though the early Church and the Patristic age reflected on the virtues, the moral law, and natural justice, the first high tide of natural law reflection came with Thomas Aquinas. He understood natural law in the context of a more encompassing theological framework that assimilated Aristotelian and Neoplatonic metaphysics to Christian doctrine. Thomas appropriated Aristotle's definition of 'nature' as an intrinsic principle of movement and rest. In this philosophy, a being's 'nature' is what it is when fully developed. A being's *telos*, or end, then, reveals its nature, both how it characteristically acts and how it is characteristically acted upon. In Thomistic cosmology, the Creator governs the world by arranging the parts in proper relation to the whole cosmos and by providing individual beings with natures proper to their own actions. Just as grace perfects, and does not destroy, nature, so the cardinal virtues are perfected by the theological virtues. The virtues lead to 'beatitude', or complete flourishing.

Contemporary advocates of natural law ethics work within the context of a cultural world that lacks any consensus about an objective basis for moral claims. Natural law is challenged by historicism as well as by naturalism. Naturalism denies that there is either a transcendent purpose to life or a metaphysical basis for affirming that any moral claims are true and binding on all human beings. Historicism claims that reality is composed only of individual entities, and that it is therefore impossible to make claims that apply to all people. Because human beings exist only as particular individuals living at particular times and in particular cultures, there can be no universal moral claims. Both naturalism and historicism work with the underlying premises that the world is valueless and purposeless, except when values and purposes are created by human choices. There is no shared humanity, only a vast collection of individuals from the same species locked in various modes of competition against one another.

A second approach to natural law focuses on the exercise of practical reason within the context of specific problematic cases. The "public philosophy" developed by John Courtney Murray, pursues natural law as the basis of moral discourse in pluralistic societies governed by representative democracy. An act is only morally wrong when, other things being equal, there is no proportionate reason justifying it (134). Natural law can thus be opined to have its being rooted in human ethos.

Positive Law Theory: Positive law theory is also called the imperative or analysts law theory. It refers to the law that is actually laid down by separating "is" from the law, which is "ought" to be. It has the belief that law is the rule made and enforced by the sovereign body of the State and there is no need to use reason, morality, or justice to determine the validity of law. According to this theory, rules made by the sovereign are laws irrespective of any other considerations. These laws, therefore, vary from place to place and from time to time. The followers of this theory include Austin, Bentham and H.L.A Hart. For these philosophers and their followers, law is a command of the sovereign to his/ her subjects and there are three elements in it: command; sovereign; and sanction. Command is the rule given by the sovereign to the subjects or people under the rule of the sovereign. Sovereign refers to a person or a group of persons demanding obedience in the State. Sanction is the evil that follows violations of the rule.

This theory has been criticised by scholars for defining law in relation to sovereignty or State because law is Older than the State historically, and this shows that law exists in the absence of State (Paton qtd in Anyam 24). With regard to sanction as a condition of law in positive law, it is criticised that the observance of many rules is secured by the promise of reward

(for example, the fulfilment of expectations) rather than imposing a sanction. Even though sanction plays a role in minority who is reluctant, the law is obeyed because of its acceptance by the community. The third main criticism of definition of law by Austin (positive law theory) is that it is superficial to regard the command of the sovereign as the real source of the validity of law. It is argued that many regard law as valid because it is the expression of natural justice or the embodiment of the spirit of people (22).

Marxist Law Theory: Marxists explain that law and human rights arise from the interactions of human beings within social structures that contain economic class distinctions. Class divisions within societies create conflict and disorder and therefore, law (and the State) comes into existence to deal with this conflict. According to Engels, "in order that these...classes with conflicting economic interests, may not a annihilate themselves and society in useless struggle, a power becomes necessary that stands apparently above society and has the function of keeping down the conflicts and maintaining order..."(206). In Marxist view of law, the bourgeoisie and the proletariat are the two classes involved in the struggle for power. Societies that allow the bourgeoisie to make moral decisions and formulate laws are unjust societies.

In the Communist Manifesto, Marx denounces bourgeoisie law as nothing more than a reflection of the desires of that class. Speaking to the bourgeois, he says "[your jurisprudence is but the will of your class made into a law for all, a will, whose essential character and direction are determined by economic conditions of existence of your class". Bourgeois law is oppressive because it is based on the concept of private property, and, thus, laws are created that promote unequal rights. Capitalism cannot create equal rights for all because the very nature of the economic system creates haves and have-nots. Conforth states, "there cannot be equality between exploiters and the exploited" (290). A capitalist society that creates unequal rights based on property and class leads those with fewer rights to protest in the form of lawlessness. The Marxist solution to the unjust society and lawlessness is to overthrow the bourgeoisie, thus allowing the proletariat to make laws. The will of the proletariat becomes the basis for all rights, laws, and judgments, thereby negating natural law, God, or any absolute moral code.

Marxists see law based on the will of the proletariat as flexible rather than inconsistent, a flexibility that denies a need for a comprehensive legal system. Because Marxists believe law arises from class conflicts caused by property, the need for law itself will dissolve once a communist society is established. Since only one class (the proletariat) will then exist, the need to promote order between classes will no longer remain. In effect, law will become unnecessary. Marxists believe that when classes are abolished, all people will create and live in an environment that promotes harmony. Criminal activity will be almost nonexistent since the catalysts for antisocial activity, that is, injustice and inequality will no longer exist. Nevertheless, this theory is challenged and the theory of private property has rather excelled triumphantly over it.

Realist Theory of Law: The Realist theory of law is interested in the actual working of the law rather than its traditional definitions. It provides that law is what the judge decides in court. According to this theory, rules not put to use to solve practical cases are not laws but merely existing as dead words and these dead words of law get life only when applied in reality. Therefore, it is the decision given by the judge but not the legislators that is considered as law, according to this theory. Hence, this theory believes that the lawmaker is the judge and not the legislative body. This theory has its basis in the common legal system in which the decision

previously given by a court is considered as a precedent to be used as a law to decide future similar cases. This is not applicable in civil law system, which is the other major legal system of the world. Resultantly, this theory has been criticised by scholars and countries following this legal system for the only laws of their legal system are legislation but not precedents. This implies that the lawmaker in civil law system is the legislative body but not the judge. Proponents of this theory include Justice Homes, Lawrence Friedman, John Chapman Gray, Jerome Frank, Karl N. Llewellyn and Yntema (Biset 10).

Thomas Aquinas Concept of Law

Thomas Aquinas' major work on philosophy of law is contained in his *Treatise on Law* which forms questions 90–108 of the *Prima Secundæ* ("First [Part] of the Second [Part]") of the *Summa Theologiæ*. In this work, Aquinas defines a law as"…an ordinance of reason for the common good, made by him who has care of the community, and promulgated." (*Summa Theologiae, Treatise on Law* Q90, Article 4 Paragraph F). Aquinas maintains Law is an ordinance of reason because it must be reasonable or based in reason and not merely in the will of the legislator. It is for the common good because the end or *telos* of law is the good of the community it binds, and not merely the good of the lawmaker or a special interest group. It is made by the proper authority which has "care of the community", and not arbitrarily imposed by outsiders. It is promulgated so that the law can be known. Thomas Aquinas divides law into four kinds viz:

i. Natural law
ii. Eternal law
iii. Divine law
iv. Human law

Natural Law: In the natural law theory, St. Thomas Aquinas had the benefit of St. Augustine's works. They both arrived at the basis of their natural law in a similar manner. The natural law is, in varying degrees, the rational creature's participation in the Divine reason-which exists only in the mind of God. It is, in other words, an "imprint" on the souls of men. The natural law in St. ThomasAquinas is primarily an ontologically grounded "*regula et mensura,*" an "*ordinatio ad finem.*" In the "*Summa Theologica*,", Aquinas says, ".. law, being a rule and measure can be in a person in two ways: In one way, as in him that rules or measures; in another way, as in that which is ruled and measured, since a thing is ruled and measured, in so far as it partakes of the rule or measure. Wherefore . . . it is evident that all things partake somewhat of the eternal law .... Now among others, the rational creature is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence. . . and this participation of the eternal law in the rational creature is called the natural law." (I. II., quaest. 91, art. 2).

The precepts of the natural law are discovered by reason. For natural law is man's participation of the eternal law (I. II., quaest. 91, art. 2.).The human reason cannot know the divine reason perfectly and completely. But the speculative reason of man does have a participation in the divine reason, whereby we have within ourselves a knowledge of certain general principles of right action, which are called "natural law."The great and important innovation of Thomistic natural law thinking thus consists in the use of the "natural practical reason" of man (quaest. 91, art. 3; art. 4; quaest. 94, art. 1; art. 2; art. 4.). This "practical reason" functions parallel to the "natural speculative reason." The "practical reason" is on an equality with the speculative reason, inasmuch as the structure of both is identical. "A law is the dictate of

practical reason. Now it is to be observed that the same procedure takes place in the practical and in the speculative reason: for each proceeds from principles to conclusions" (quaest. 91, art. 3.) The place of the practical reason in the natural law is to discover and formulate a practical human law.

Eternal Law

To St. Thomas, the *Lex Aeterna* (eternal law) is the absolute and objective *a priori*. The natural law stands in its relation to the *Lex Aeterna* as a "subjective" a priori of right and justice, being imprinted on the soul of man. As to the manner in which man is able to become aware of the *Lex Aeterna*, in order to make it the basis of his laws, St. Thomas asserts that man is conscious of the *Lex Aeterna*, and, therefore, also conscious of the natural law, "because the rational creature partakes thereof (of the *Lex Aeterna*) in an intellectual and rational manner, therefore the participation of the eternal law in the rational creature is properly called a law, since law is something pertaining to reason." (quaest. 91, art. 2.)

In this point, St. Thomas claims that the soul is intuitively certain of the idea of justice which is ineradicable. Moreover, how does God relate to creatures through this law? The eternal law is a kind of exemplar causality insofar as it regards God as cause of the intelligible ordering of creatures with respect to their proper operations, which pertains to a creature's second perfection. The eternal law is a ratio (i.e., an intelligently conceived intelligible order) conceived by divine wisdom that directs all things to their proper acts and ends through the intelligible structuring of their natures that is manifest in their natural inclinations (i.e., intrinsic principles of action). By means of their intrinsic intelligible structures, God moves all creatures to their proper acts and ends through his efficient causality. And by attaining their proper goods, all creatures attain God as the final cause of their being.

Divine Law

The great task of St. Thomas Aquinas was to complete the process of reconciling the Aristotelian-Alexandrian tradition with Christian thought. To St. Thomas Aquinas, Divine law exists in itself and can only be conceived through itself. The Divine intellect eternally remains the measure and rule of all things, and each thing has truth to the degree that it presents the Divine intellect. So a Divine concept there the law-is true by reason of itself (I. II., quaest. 93, art. 1.). St. Thomas Aquinas states that the law is the practical reason emanating from a ruler. The created Universe is ruled by Divine providence; consequently the community of the Universe is governed by Divine reason. So the very Idea of the eternal government of all things in God has the nature of a law. And since the Divine reason is not subject to time, but is eternal, its law, too, must be eternal (quaest. 91, art 1.)

All laws insofar as they partake of right reason, are derived or proceed from the *Lex Aeterna*. Nothing is just and lawful but what has been drawn from the *Lex Aeterna*. For the power of the second mover must be derived from the power of the first mover. God imprints on the whole of the created Universe the principles of its proper actions, making thus all actions and movements subject to the Divine government. Now among all others, the rational creature is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and for others. Wherefore, it has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end. It is God, the Creator of all things, who imprints on the soul of man the principles of his proper actions. This

constitutes man's participation in the Divine law sometimes referred as the *Lex Aeterna* (eternal law), a participation which is called the *Lex Naturalis Moralis*, and which forms the ultimate source of his own law-the human law.

Human Law

St. Thomas Aquinas states that the precepts of law are concerned with human acts or "human matters."So the third major problem with which he deals with is whether there is such a thing as a Positive or Human Law that controls human acts. He concludes that "it is from the precepts of the natural law, as from general and indemonstrable principles, that the human reason needs to proceed to the more particular determination of certain matters. These particular determinations, devised by human reason, are called human laws, provided the other essential conditions of law be observed..." (quaest. 91, art. 3.)

Man must have laws framed by man because he cannot achieve perfection of virtue-which is his end in life-by himself. The object of the law is to let man have peace and virtue. Man cannot gain virtue by himself alone because "the natural law was perverted in the hearts of some men, as to certain matters ... which perversion stood in need of correction." (quaest. 94, art. 5.) It is, in short, the fall of man which perverted human nature, blurred his reason, and weakened his will. The human law is to enable disabled persons to follow the dictates of the natural law. The end of human law is to be useful to man. There are three other conditions which must be fulfilled by the human law. The first is that it shall be virtuous. Secondly, it must be just, possible to nature, according to the custom of the country, and suitable to the time and place. And thirdly, it must be necessary, useful, clearly expressed, and framed not for a private benefit, but solely for the common good (quaest. 95, art. 3) and without these conditions, a law is not a law.

A Critique of Aquinas' Concept of Law

According to Aquinas, the natural law is the "rational creature's participation of the eternal law," and "the eternal law" is the supreme act of (practical) reason by which an omnipotent and omnibenevolent Creator freely orders the whole of His creation (t pt. I-II, q. 91, art. 1.) Thus, the natural law is a part of the rational plan by which God providentially governs the created order. It is worth pausing here to observe, moreover, that there is no sense in which the natural law, as the eternal law's participation in the rational creature, is incompatible with human freedom. The dependency of human choice and action on divine power and causality does not vitiate the human power of creative free choice. Indeed, Aquinas interprets the biblical teaching that man is an *imago dei* precisely as meaning that human beings are endowed with the God-like attributes of practical rationality and freedom. Thus it is that, though God directs the brute animals to their proper ends by instinct or "natural appetite," He directs human beings to their proper ends by the God-like power of practical reason, namely, the power to understand what is humanly (including morally) good and bad and the freedom to choose to act in light of the reasons thus provided (pt. I-II, q. 91, art. 2.).

A commonplace criticism of Aquinas is that his evident endorsement of Saint Augustine's statement that "a law that is not just seems to be no law at all" shows that he is guilty of merging the categories of "legal" and "moral" in such a way as to render it analytically impossible for positive law and natural law to be in conflict. It is already seen that Aquinas's account of the derivation of positive law from natural law is complex and, in certain respects, quite subtle. Still further complexities and subtleties can be brought into focus if we consider the context of Aquinas's endorsement of Augustine's statement. It will become clear that Aquinas's conception of "law" and "legality" is every bit as rich and highly nuanced as the conceptions

advanced by modem analytical legal philosophers. To be sure, Aquinas does not go very far in carrying out the analytical work of explicitly identifying the respects in which concrete instances of the phenomenon of human law can deviate from "law" in a social-theoretical "focal" or "paradigmatic" sense (a sense, in part, built up out of consideration of concrete instances, albeit from an "internal" viewpoint that itself requires the application of critical-practical intelligence while still retaining constitutive features of the concept of law. But he deploys the term "law" in an appropriately flexible way to take into account the differences between the demands of (1) intrasystemic legal analysis or argumentation (for example, in the context of professional legal advocacy or judging), (2) what we would call "descriptive" social theory.

Nothing in Aquinas' legal theory suggests that the injustice of a law renders it something other than a law (or "legally binding") for purposes of intrasystemic juristic analysis and argumentation. True, he counsels judges, where possible, to interpret and apply laws in such a way as to avoid unjust results where, as best they can tell, the lawmakers did not foresee circumstances in which a strict application of the rule they laid down would result in injustice and where they would have crafted the rule differently, had they foreseen such circumstances. But even here he does not appeal to the proposition that the injustice likely to result from an application of the rule strictly according to its terms nullifies those terms from the legal point of view. Nor does Aquinas say or imply anything that would suggest treating Augustine's comment that "an unjust law seems not to be a law" as relevant to social-theoretical (or historical) investigations of what is (or was) treated as law and legally binding in the legal system of any given culture (however admirable or otherwise from the critical-moral viewpoint).

Tyrants, those who came to power by legal means and govern by issuing and enforcing laws (*lex tyrannica*) must look elsewhere, rather than to Aquinas, for moral arguments designed to insulate them from insurrection and punishment for their misrule. Nothing in his thought merges natural and positive law in such a way as to confer upon positive law an automatic conformity to the requirements of natural law. On the contrary, according to Aquinas, the positive law of any regime and those rulers who create and enforce it stand under the judgment of natural law. Tyrannical rule is a "perversion of law" and, as such, far from creating a duty of obedience, it gives rise to a (prima facie) right of resistance to the uttermost.

Implications of Aquinas' Concept of Law on Law Making Today

It is imperative to note that the implication of St Thomas Aquinas' concept of law on law making in Nigeria today can never be overemphasised. St Thomas Aquinas conceives law as must exude from rational beings who have interest of the community, society or the state (as the case may be); the original intent of the law is not supposed to be for just a penal reason or for a selfish course but (as stressed by Aquinas) for the good of the people it is made. Aquinas' major achievement in his postulation on law is in his division of the kinds of law. This makes laws flexible, easy-to-understand, and also creates a moral and a religious marriage for law.

Law and law making in Nigeria seem to be in utter ridicule as many, both in authority and regular citizens, are becoming indifferent to law and law making due to flagrant disregard for laws and rule of laws, and numerous loopholes in the extant laws. Sometimes it gets to a point that some of the clauses of the laws become so vague that even those saddled with the responsibility of its interpretation get confused about the original intent and interpretation of the law. Nigerians, more often than not, see the extant laws as optional civil obligation and regulations which binds compulsorily only on the so-called commoners. Hence corruption and

ISSN Prints: 2616-1264 Online: 3027-117

corrupt practices in Nigeria soar high geometric and the laws appear to be feeble in addressing such.

Human law as explained by Aquinas focuses on the interrelationship between humans (without exception or class distinction) who have the good of each other at heart and who allows themselves to be moderated by the regulations of the laws made for their good by the person who is vested with the power to do so. With everyone seen as equal before the law, statues, societal placement, financial strength and other mundane circumstances become invisible to the eyes of the law. The only thing visible to the law is the action of man with relationship to fellow man.
The constitution of the Federal Republic of Nigeria which governs and regulates the activities of every citizen of the country, tries, despite its lapses, to touch every fabric of our existential reality as a nation. This a practical example of a human law, which should curb the excesses and selfishness of every citizen and with all these on ground crime, corruption and lawlessness is reigning supreme in Nigeria.

This is a gross ignorance and negligence of the intention of law as postulated by St Thomas Aquinas. When the court which is supposed to the final hope of the common man rules on a matter based on the rule of law and such ruling is flaunted, it is a gross aberration of the intention of the law by St Thomas Aquinas and that adversely spells doom for the nation as would for any sane society. The legit media, on the 25th August reported a human right lawyer Femi Falana who said he has compiled 32 court orders shunned by the Federal Government of Nigeria. This attests to the fact that Nigeria is a way far from St. Thomas' kind of human law. By implication, the law is not meant for all Nigerians or there is a level on the echelon of governance that one becomes more than the extant laws.

There is a term, 'Immunity clause', which pervades our political space and has given coverage for political office holders for as long as they remain in power. This clause rather gives license for crime and corruption so long as possible, a political office holder remains in office. This clause which appears in our extant law is a defilement of the function of human conscience which is enshrined in the content of the "Natural Law" as established by St. Thomas Aquinas. Also it is a breed for class distinction and inequality. Law as intended by Aquinas is for the good of the citizen and supposed to be made by the one who has the interest of the citizen at heart. In Nigeria today, the law and the enforcers of the law are like arrows in the hands of the government to hunt down perceived enemies and those who are seen as not in one accord with the government. This position, thus, eludes what Aquinas defines as law and consequently, could be viewed as injustice and or, following his exact words, not qualified to be termed as law hence what is law must be geared toward a common good regardless of class, status or race.

Conclusion

The ethics of Thomas Aquinas is developed within theological frameworks. Guiding himself by eternal law, which is a project of Divine Wisdom, Thomas creates the order of morality and law. The totality of creatures participates in the eternal law according to the predestined species and predetermined natural inclinations. As a rational animal capable of anticipating the law of action in relation to eternal law, man is distinguished from other creatures. And his participation in eternal law is called natural law. The instance of morality is conscience, which evaluates the motivations and moral quality of actions. Thus, all laws made must significantly appeal to human conscience toward a common good.

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