

## **Marxian Dialectics, Social Challenges of the C21<sup>st</sup> and Revival of Natural Law Philosophy: Nigeria in the Spotlight**

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**Abstract:** The divisive outlook of Marxist Philosophy amongst jurists and scholars is not influenced by different perception of the capitalist West and Communist East blocks alone but by dispensational interpretation of Marx thoughts on Historical Materialism, Economic Determinism and eventual abolition of State and the law. Although political reality of contemporary times seem to contradict these thesis of Marx but this paper, by doctrinal approach has shown that a more passionate view of Marx thoughts present him as a scholar disillusioned by the failures of positivist philosophy in all ramifications. Looking at corruption as one phenomenal threat to continued existence of the State and positivist laws in Nigeria, the paper recommended a resort to the values of Natural Law as catalyst for solving the riddles of the 21<sup>st</sup> century.

**Key Concepts:** Marxian Dialectics, Social Challenges, Natural Law Philosophy, and Revival.

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### **01. Introduction:**

Marxist school of Jurisprudence is one philosophical movement riddled with controversies both in its nature and functions. In one breath, it could be regarded as a variant of historical approach to law because of its emphasis on social evolution from one state to the other and in another breath, it typifies sociological philosophy on its thought concerning functions law performs in the society.<sup>1</sup> Beyond this are the different interpretations placed upon certain thoughts of Karl Marx, the father of Marxist theory of law by his adherents, on his thoughts as a youth, as distinct from the line of thought he emphasized in the later years of his scholarship. From such differences upon which two separate perceptions of Marxist philosophy arose, one as Western Marxians, drawn out of various Western sources, and the official philosophy in the Soviet flank with rigid readings of Marx, referred to in legal scholarship as dialectical materialism.<sup>2</sup> In both spheres, this specie of philosophy has been known to influence thoughts on esthetics, ethics, ontology, epistemology, theoretical philosophy, philosophy of science and even philosophy of historical and political philosophy.<sup>3</sup> This amorphous trend of Marxist philosophy, including its tenacious hold to the idea of Economic materialism, the struggles between the proletariats and the bourgeoisies, and Marx' utopian projection of the disappearance of the law and the State at a particular point in historical evolution, seem to give out this philosophical school to political activism alone, thus beating it to the background in contemporary discussion on Legal theories.

However, some recent developments in the Nigerian State and her political and social developments seem to relive some of the core thoughts of Marx that thus informed this paper. Driven by this perception, this paper resorts to doctrinal approach to examine impact of corruption, impunity and various trends of violent crimes, to interrogate the relevance of Marxist thoughts on economic determinism, class system, the State and the law on contemporary developments in Nigeria. The significance of this paper is therefore borne out by the need to identify the gaps that attract criticism from various scholars on Marxist philosophy of law, with a view to proffering feasible supplements, if and when Marx projections fall through.

For clarity and brevity, the paper is divided into four sections, with the first section dealing with conceptual clarification. The second section deals with practical class struggles at International and domestic levels with particularity to African Countries, using Nigeria as case study. The third section interrogates gaps in Marxist philosophy on the disappearance of law and withering away of the State seen as instrument of oppression of the proletariats, while the fourth section deals with conclusion and recommendations.

### **02. Conceptual Clarification**

For avoidance of doubt, the perspective from which some of the main concepts in this paper employed is clarified at this point. For brevity, however, only Marxian Dialectics, and Social Challenges are clarified here after which corruption and its effect on the Nigerian Nation State will be discussed before tidying up with natural law as instrument for re-engineering the Nigerian State against index of Marxian postulations.

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<sup>1</sup> J.N. Samba, *Fundamental Concepts of Jurisprudence* (Bookmakers Publishing, 2007)99.

<sup>2</sup> J.M. Elegido, *Jurisprudence* (Spectrum Books Limited, 2002)69

<sup>3</sup> *Ibid.*

## 2.1. Marxist Dialectics

Marx basic concepts, including his thoughts on the “base and superstructure”, “historical materialism” and “the State” revolve around his idea of production forces, relations of production and social classes.<sup>4</sup> While the productive forces refer to means of production in the society, including all the productive facilities, machinery and labour resources, the relation of production refers to a crude capitalist arrangement where the employee sells his labour to the owner of the means of production, who bears all the risk and profits of investment, consequent upon which he determines market forces, finances, investment, and technologies for improving productivity.<sup>5</sup> To Marx, connection to means of production and economic system determines which class one belongs in the society.<sup>6</sup> His idea of social class though initially classified into the proletariats, the capitalist as owners of the means of production and the land owners but later, the land owners and the capitalists merged into the bourgeoisie as against the proletariats.<sup>7</sup> The former at all times in the society always controls the means of production, towards exploiting the masses at every stage of social evolution.

To Marx, the nature of each society is determined by material conditions of life by what he referred to as base and superstructure, constituted by the relationship of the productive forces, to the means of production, determining the legal and political institutions and the whole ideology of the society.<sup>8</sup> Explaining the links between production forces and relation of production, Marx was emphatic on the fact that men are not free to choose any form of society for themselves, except by a particular State of development in the productive forces. It is on this score, Marx reasoned that all legal and political institutions are only schemed to protect the relations of production for the society; to contribute to the effective production and distribution of commodities.<sup>9</sup> That was why he said “it is not the consciousness of men that determines their existence, but.....their social existence determining their consciousness”<sup>10</sup> Marx, writing with Engel said:

*In every historical epoch, the prevailing mode of economic production and exchange, and the social organization necessarily following from it, forms the basis upon which it is built up, and from which alone can be explained, the political and intellectual history of the epoch.*<sup>11</sup>

Engel summed up this position when he said:

*The economic structure of society always furnishes the real basis, starting from which we can alone work out the ultimate explanation of the whole superstructure of the juridical and political institutions as well as of religious, philosophical and other ideas of a given historical period.*<sup>12</sup>

Employing historical evolution in support of his thoughts, Marx cited the French Revolution and its result as a pointer to the resultant trend of combined opposition between the capitalists and the proletariats, leading to a revolution that would eventually subdue the bourgeoisie and disappearance of private property.<sup>13</sup> According to Marx, this historical materialism will result in such revolutionary conflict that will destroy capitalism because with technological advancement, the bourgeoisies will resort to machineries that would make human labour irrelevant, thus causing unemployment that will increase opposition for the ever prospering capitalist class, which condition he said would begin with the industrialized world.<sup>14</sup> This, according to Marx will be the beginning of the end of class as the society will devolve into communism and the State as the kernel

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<sup>4</sup> M.T. Ladan, *Introduction to Jurisprudence* (Malthouse Press Ltd, 2010)65-66

<sup>5</sup> M.D.A Freeman, *Lloyd's Introduction to Jurisprudence, 8<sup>th</sup> edn.* (Thomson Reuters Limited, 2008) 1134

<sup>6</sup> Elegido, *op.cit* at 70

<sup>7</sup> *Ibid.*

<sup>8</sup> R. Hoveman, ‘Marxism and the Meaning of Materialism’ <[www.socialistworker.org](http://www.socialistworker.org)> accessed on 14-03-2021

<sup>9</sup> W.H. Shaw and A. Sohn-Rethel, *ectal* ‘Marxism and Materialism: A Study in Marxist Theory of Knowledge’ <[www.researchgate.net/publication/21-24](http://www.researchgate.net/publication/21-24)> accessed on 14-03-2021

<sup>10</sup> M. Mamardasvili, ‘Analysis of Consciousness in the Works of Marx’ <[www.jstor.org/stable](http://www.jstor.org/stable)> accessed on 23-03-2021

<sup>11</sup> K. Marx and F. Engels, ‘Communist Manifesto Reader’s Guide’ <[www.penguinrandomhouse.com/books](http://www.penguinrandomhouse.com/books)> accessed on 25-03-2021

<sup>12</sup> *Ibid*; F. Engels, ‘Socialism: Utopian and Scientific’ <[www.marxist.org/works/soc.utop](http://www.marxist.org/works/soc.utop)> accessed on 25-03-2021.

<sup>13</sup> H. Heller, ‘Marx, the French Revolution, and the Spectre of the Bourgeoisie’ <<https://www.jstor.org/stable/25681227>> accessed on 25-03-2021.

<sup>14</sup> B. Bimber, ‘Karl Marx and the Three Faces of Technological Determinism’ <<https://www.jstor.org/stable/285094>> accessed on 25-03-2021

of material protectionism would, in the words of Engel “wither away”.<sup>15</sup> This, according to Marx is because, the State having been adapted to domination as an organ of exploitation by the capitalists, would no longer be relevant when social class is abolished by popular mass opposition to the capitalist class.<sup>16</sup> As Lenin explained:

*The State is an organ of class domination, an organ of oppression of one class by another; its aim is the creation of “order” which legalizes and perpetuates the oppression by moderating the collisions between the class.*<sup>17</sup>

In this paper therefore, discussion on Marxian dialectics, is all about how social challenges of the 21<sup>st</sup> century play out into Marx’ idea of social class, run on material determinism, resulting in conflict between the capitalist class and the proletariats, which conflict will lead to the extinction of social class, for an altogether different form of society where equality, including the balancing of needs against available resources is emphasized, as opposed to the oppressive management that is the bane of the present dispensation.

### 03. Social Challenges

No doubt, technological advancement of contemporary world, resulting in globalization in almost every facet of humanity impacts the world in several ways, including social challenges that are almost running the world aground in the twenty-first century. Ethnic and cultural identity, youth restiveness, crime wave, corruption, break down of rule of law, conflict of unmanageable information, cross-border transmission of strange diseases, emergence of strange virus attacks to which the world lacks solution, increased commerce, overheating International competition by various States to outwit or dominate one another, and several others.<sup>18</sup> Africa, and Nigeria in particular, has her share of these challenges ranging from poverty, mismanagement of lean natural resources of each state, ethnic and civil wars leading to ethnic cleansing in some States, on the scale of crime against humanity.<sup>19</sup>

In most African countries, these challenges take their bearing from corruption of pandemic nature, with all forms of devastating effects, sometimes grounding State sovereignty, and in extreme situation, resulting in foisting failed or threatened State status on some African countries.<sup>20</sup> As a strategic member of African community, Nigeria’s experience in social challenges may safely pass for case study of what happens in other nations within the Continent, thus explaining “Nigeria in the spotlight” in this paper.

In Nigeria as in several African Nations, the challenges include National identity problems of various ethnic groups, poverty, inequality and class emphasis, terrorism, high level of impunity and child mortality, unemployment and corruption, leading to lack of development, break down of rule of law, abuse of all social institutions, driving the Nigerian nation State to the precipice of a threatened State.<sup>21</sup> All these challenges take their bearing from corruption that has virtually become a mentality challenge, attacking every aspect of Nigerian’s nationhood, including the economy, education, security, health sector, familihood and even the religious sector that is suppose to give spiritual and social direction to people.<sup>22</sup> These vices typify what this paper refers to as social challenges of the c21<sup>st</sup>, which the paper seeks to show as the driving force that could disintegrate the State and the law, evolving an altogether different social arrangement within the ideals of Marxian dialectics.

For a more incisive understanding of what constitutes corruption globally and how it impacts on Nigeria as a nation, it is imperative to define corruption here and its workings in Nigeria, to put it in perspective as one vice that has virtually crippled the Nigerian State and her laws, built on mainly positivist philosophy that

<sup>15</sup> M. Monalisa, ‘Wittheering Away of State: Meaning, Engels, Lenin and Stalin’s View’ <[www.politicalsciencenotes.com](http://www.politicalsciencenotes.com)>*marxism*> accessed on 25-03-2021

<sup>16</sup> E. Hardcastle, ‘The Withering Away of the State-from Marx to Stalin’ <<https://www.arxist.org/archive/hardcastle>> accessed on 25-03-2021.

<sup>17</sup> W. Lenin, ‘The State: A Product of the Irreconcilability of Class Antagonism’ <<https://www.marxist.org/archive/lenin/archive>> accessed on 25-03-2021.

<sup>18</sup> E. Sall, ‘Africa and the Challenges of the Twenty-first Century: Keynote Addresses Delivered at the 13<sup>th</sup> General Assembly of CODESRIA’ <<https://www.jstor.org/stable...>> accessed on 15-03-2021.

<sup>19</sup> B. Akinterinwa, ‘Challenges of the Twenty-first Century in Nigeria: The Case of National Development and Unity’ <<https://www.thisdaylive.com/index>> accessed on 25-03-2021.

<sup>20</sup> K.R. Cox, ‘Failed States in Question and the Case of Sub-Saharan Africa’ <<https://www.journals.opereedition.org>>*espacepolitique*> accessed on 25-03-2021.

<sup>21</sup> Akinterinwa, *op.cit.*

<sup>22</sup> L.U. Udo, ‘The Impact and Consequences of Corruption on the Nigerian Society and Economy’ <<https://www.ajol.info>>*ijah*>*article*>*view*> accessed on 25-03-2021.

thus warrant a call for revival of Natural law philosophy, as a measure to evolve an altogether different philosophical outfit within Marxian projection.

### **Corruption: Instrument of State Abolition**

Corruption as a global scourge may be differently perceived by various societies but its manifestations and impact bear global outlook, thus giving rise to seemingly familiar definitions across the board. As a matter of global concern, it is defined to include bribery, fraud and other related offences, including any action or commission initiated by any member of an organization against the rules, regulations, norms and ethics of the organization, the purpose of which is to meet the selfish ends of such member.<sup>23</sup> According to International Monetary Fund and World Bank, it is the abuse of public office for private gains; an anti-social behaviour contemning improper benefits, contrary to legal and normal norms undermining capacity of constituted authority to secure the welfare of her citizens.<sup>24</sup> To Gray and Kaufmann, corruption 'include bribery and corruption, necessarily involving at least, two persons and other malfeasances that a public official can carry out alone, including fraud and embezzlement'.<sup>25</sup>

Because of its elusive manifestation in various societies, its import is bound to differ from one society to the other but whatever the differences in the presentation of corruption by various scholars however, the manifestation of this global scourge is virtually the same all over the world. In its intrinsic workings therefore, corruption manifests in form of abuse of office and privileges, low level of transparency and accountability, inflation of contracts, misappropriation, advance fee fraud, collection of illegal toll, drugs and arms smuggling and the like.<sup>26</sup> In Nigeria, it is clouded in various local expressions like financial malpractices, *egunje*, dash-dash, gratification, brown envelopes, palm greasing, ground softening, settlement, below the table, appeasing the gods, undocumented payment, *kick-back*, shady deals, 10% load, secret-secret and the like.<sup>27</sup> Its tentacles extend to government activities by appropriation of public assets for private use, embezzlement of public funds by politicians and high ranking civil and corporate servants. It manifests in the running of every aspect of national economy as in the case of fake drug manufacturing and importation, adulteration of foods, drinks and cases of piracy and fraud at all levels of national life.<sup>28</sup> It is identifiable in form of illegal, unethical and unauthorized exploitation of natural resources of the nation and grossly too, in the electoral system in form of electoral manipulations and other irregularities.<sup>29</sup> Its spread to every aspect of the nation's life, including politicians, law enforcement agents, civil and public servants and even organized and liberal labour sector justifies description of corruption as a *demon* or systemic vice, especially in Nigeria where even religious organizations are as soiled in this vice, as any other sector.<sup>30</sup>

Today, corruption has so overwhelmed and damaged what used to be referred to as African cultural value of every one being responsible to all, or communal living to the extent that honesty in any public office in Nigeria has become irrational, thus crippling all anti-corruption measures.<sup>31</sup> Indeed, corruption has become so endemic that even at family level, children habitually and tactically ask for gratification as pre-condition for carrying out their normal domestic chores.

Some authors allude corruption to African notion of family inter-dependence which allusion this paper vehemently rejects because that is an allusion to laziness as African vice.<sup>32</sup> In countries where corruption is as rampant, it is not as much of expectation of help from public office holders as much as lack of affirmative character of sort. The underlying basic principles of social organization anywhere in the world should be an understanding that everybody must be allowed to seek his own good, through legitimate individual efforts, with the rationale that the

<sup>23</sup> Corrupt Practices and Other Related Offences Act, 2000, section 2

<sup>24</sup> S. Osoba, 'Corruption in Nigeria, Historical Perspective' Rev. Afr. Pol. Econ. 23 (69) 317 and 386; C. Langarde, 'Addressing Corruption with Clarity' <<https://www.imf.org>> accessed on 25-03-2021.

<sup>25</sup> C.W. Gray and D. Kaufmann 'Corruption and Development' <<https://www.imf.org/1998/03/pdf>> accessed on 20-07-2020 at 5.22am.

<sup>26</sup> B.A. Akinterinwa, 'Manifestations of Corruption and Societal Discipline: The Challenge of Nigeria's 2019 Presidential Candidates' <<https://www.thisdaylive.com/index...>> accessed on 25-03-2021.

<sup>27</sup> K.O. Amah, 'Effect of Corruption in Nigeria Economy: A Critical View' <<https://www.hrmars.com/papers/detail/IJARAFMS>> accessed on 25-03-2021.

<sup>28</sup> M.T. Page, 'A New Taxonomy for Corruption in Nigeria' <<https://www.carnegieendowment.org/2018...>> accessed on 25-03-2021

<sup>29</sup> *Ibid.*

<sup>30</sup> Amah, K.O. *op.cit*

<sup>31</sup> O, Alege 'Effects of Corruption on Economic Development in Nigeria' <<https://www.longdorm.org/articles>> accessed on 20-03-2020.

<sup>32</sup> L.U. Odo, 'The Impact and Consequences of Corruption on the Nigerian Society and Economy' *International Journal of Arts and Humanities (IAH) BahirDar-Ethiopia* vol.4(1) 2/no.13, January 2015, p.177-190.

principle would guarantee the common good of the larger populace.<sup>33</sup> This principle forms the basic foundation of every social order, and the ultimate consideration for economic, political, social and cultural or whatever activity of every society. However, where survival at any cost and by any means is implied in the individualized type of social organization, not everybody can successfully seek his own good, let alone pursue and accumulate wealth.<sup>34</sup> Thus, in reality, it is only a tiny fraction of such society and mostly, those with direct or indirect link with the State functionaries that are able to seek their own good; to accumulate enough wealth, to further appropriate State power and resources, by which they exploit the labour and sweat of the majority, unhampered. Such negligible few ignore laws, rules and procedures to hypocritically project themselves as seeking the good of the society.<sup>35</sup> This development provides a fertile ground for corruption which threatens every sector of each society thus forming the basis Marx dialectics on economic determinism.

Marx philosophy on economic determinism, class, State and the law has been criticized by several scholars from a perspective this paper would rather describe as an aberration to social realities of the time, especially in several corrupt countries, Nigeria in particular. No doubt, Marx engaged in several excesses, footed in day-dream, but that does not belie the realities of his observations on class, State oppression, use of the law by the dominant class and political machinery as instrument of management of State economy, for the benefit of the bourgeoisie. For instance, in Nigeria, public funds and public investment, including laws on security and their execution are all schemed towards the benefit of the political class.<sup>36</sup> While the common man is left vulnerable in the hands of hoodlums, kidnapers and murderers in Nigeria, members of the elitist political class are granted police protection to the last bit of their family members. When armed robbers visit the vulnerable in Nigeria, police never turn up, either because they complain of lack of serviceable vehicles or fuel to mobilize to site.<sup>37</sup> Where they ever turn up at all, it is usually long after the marauders must have completed their operation and vacated the site.

For several years, Nigerian government claimed to combat Boko Haram insurgents, resulting in Billions of dollars in foreign debt.<sup>38</sup> While government claimed the insurgents have been decimated but in recent years, it is becoming clearer that with complicity of the political class, the insurgents only decentralized into local communities where they maim, kidnap, decapitate and loot the lean means of survival of the suffering masses while government claimed again and again that “we are on top of the situation”. In a depressed economy resulting from penchant for greedy corrupt practices, with overwhelming youth unemployment, it is difficult to fathom how the impoverished youths will not yield to the temptation of the political class to rig election and engage in all kinds of violent crimes to enthrone their political *god-fathers*. In a nation with peanut monthly salary that may not be paid several months, it is difficult to fathom how civil servants who are suppose to act as bridle to excesses of the political class will not compromise their integrity to measure up to expectations of their extended family members regarding their class in the society.<sup>39</sup> They definitely would, especially knowing fully well that the State, represented by the political class controls all machinery for monitoring, prosecution and persecution of corrupt practices, including civil servants who fail to “cooperate”. This no doubt, point to social imbalance emphasized by Marx thought on economic determinism and oppression of the proletariats by the bourgeoisies.

In the last two decades, Governors of various States in Nigeria, including those who corruptly looted State treasuries without any infrastructural and human development to show for their tenure, resorted to passing pension laws that financially equated them with their serving successors.<sup>40</sup> These laws were quietly passed in collusion with State legislature who, expectedly benefited from such sordid arrangement in a country where over seventy percent of the population live below poverty line. This explains why Marx said statehood at any point is only an instrument of support and protection of interest of the dominant political class.<sup>41</sup> Quite unfortunately, the press that is suppose to monitor State management of public resources by the bourgeoisie is owned and run by the same political class, thus

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<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> G.E. Chinweuba, ‘Culture and Corruption: A Critical Analysis of the Basis of Nigerian Depraved Experience’ <<https://www.ajol.info/article/view>> accessed on 20-03-2020.

<sup>36</sup> O. Agbu, ‘The Nigerian State and Politics in the Fourth Republic’ <[codesria.org/IMG/pdf/1.electi...](https://codesria.org/IMG/pdf/1.electi...)> accessed on 12-03-2021.

<sup>37</sup> N. Adegoke, ‘The Nigeria Police and the Challenges of Security in Nigeria’ <[www.orabanjbm.com/RPAMindex.php](http://www.orabanjbm.com/RPAMindex.php)> accessed on 12-03-2021.

<sup>38</sup> Y. Kazeem, ‘Nigeria will Arrest its Ex-Security Chief for \$2Billion Arms Fraud while Boko Haram Ran Riot’ <[qz.com/Africa/nigeria-will-arrest-its-e...](http://qz.com/Africa/nigeria-will-arrest-its-e...)> accessed on 12-03-2021.

<sup>39</sup> G.F. Eke, ‘Corruption in the Civil Service: The Death of Effective Service Delivery’ <[www.ajol.info/ijah/article/view](http://www.ajol.info/ijah/article/view)> accessed on 12-03-2021.

<sup>40</sup> T. Ademiluyi, ‘Pension for Former Governors’ <[www.thinlaylive.com/2019/11/30/pe...](http://www.thinlaylive.com/2019/11/30/pe...)> accessed on 12-03-2021.

<sup>41</sup> Samba, *op.cit* at 103-107.

justifying Marx position that law is only subsidiary and never autonomous of economic factors. His emphasis on social stratification with history made up of class struggles seem to reflect the Nigerian situation in the estimation of the common man that whatever statehood and political appointments represent, is all about economic control as opposed to societal management.

Several scholars query Marx prediction of a revolution by which law and the State will be abolished.<sup>42</sup> They query the fact that some laws bordering on traffic and most part of criminal law are never economy-bias.<sup>43</sup> While feasibility of the State withering away may not be in sight in the immediate future but the scheming of Nigerian criminal laws towards securing economy of the bourgeoisies is not far-fetched.<sup>44</sup> No doubt, there have been other areas of class struggles as in the case of religious and ethic struggles in Nigeria but the economic base of such struggles have been traceable to economy or struggle for corrupt financial empowerment as Nigerians have witnessed in the Niger Delta struggle and its corrupt management;<sup>45</sup> and the sordid corrupt enrichment of several State managers of Boko Haram insurgency, in Nigeria.<sup>46</sup> In Nigeria, an evolution within the society in form of thesis and antithesis of the society into a synthesis of classless society as predicted by Marx may never emerge in the near future because, as seen in the ENDSARS protest in 2020, the level of high-handedness exhibited by the ruling class who are themselves the capitalist class in Nigeria point to the fact that this class will stop at nothing to ensure that the down-trodden of the society, (not Marx working class) will be subjugated at all cost, to retain the *statusquo*.<sup>47</sup>

At the level of legislation, what plays out in Nigeria is that each ruling party, usually in the majority in the legislative house, initiate amendments to existing electoral laws, to suit her master-plan to manipulate the next electoral process. While such initiatives rattle peace of the House most times but when it comes to crafting laws that scoop the economy of the nation in form of “salaries and allowances” of members of the Legislative house or the Executive, there is usually calm, collection and compromise.<sup>48</sup> At State level, notwithstanding that the Constitution of the Federal Republic of Nigeria guarantees existence of “democratically elected local government council” but State Houses of Assembly are manipulated by various ubiquitous state Governors to initiate legislation that empower Governors to appoint their political surrogates as sole Administrators of various local Government Councils, in some cases, throughout the tenure of some of the Governors.<sup>49</sup> Such Administrators are used by State governors to siphon development and funds processed through the States from the Federation account thus accounting for inability of local government councils to pay salaries for months or to carry out development projects of any kind, for years.<sup>50</sup> Under such arrangement, it is difficult if the “State” and the “Law” as envisaged by Marx in his postulation of “thesis and antithesis” exist in Nigeria in the first place and if it ever did, if it has not already withered away, leaving only what Marx described as “a committee for managing the common affairs of the whole bourgeoisies”.<sup>51</sup>

#### **04. Re-Engineering the Nigerian State through Natural Law**

Natural law has been accorded different meaning and interpretations according to each dispensation, thus explaining its characteristically pliable disposition to exploitation by monarchs, rulers and governments at various times, to justify their actions even where such actions were in fact, unjust.<sup>52</sup> Even revolutionists have been known to exploit natural law as instrument of change, through revolts. No wonder, Ross described it as a harlot that is at the disposal of every quest.<sup>53</sup> It was used in challenging the divine right of kings for the

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<sup>42</sup> *Ibid.* at 105

<sup>43</sup> *Ibid.*

<sup>44</sup> PAC Rodas and V. Mohini, at al, ‘Journal of Development Studies’ vol.55, 2019,, issue(2)433  
<<https://doi.org/10.1080/00220388.2017.1366453>> accessed on 12-03-2021.

<sup>45</sup> A.F Modupe, ‘Niger Delta Development in a Corruption Ridden Society: Importance of Insurgency’  
<[globaljournals.org](http://globaljournals.org)>4-Niger-Delte> accessed on 12-03-2021.

<sup>46</sup> U.D. Umaru, ‘Impact of Corruption on Insurgency in the North Eastern Region of Nigeria’  
<[www.iosrjournals.org](http://www.iosrjournals.org)> accessed on 12-03-2021.

<sup>47</sup> Amnesty International, ‘Demand Justice for Violent Repression of Endsars Protesters’ <[www.amnesty.org](http://www.amnesty.org)>  
accessed on 12-03-2021.

<sup>48</sup> U.D. Umaru, ‘Corruption and Legislative Functions in Nigeria’ <[www.researchgate.net](http://www.researchgate.net)>publication>31...>  
accessed on 12-03-2021.

<sup>49</sup> S. Bolatito and S. B. Ibrahim, ‘Challenges of Local Government Administration in Nigeria: An Appraisal of Nigeria Experience’ <[www.researchgate.net](http://www.researchgate.net)>publication>33...> accessed on 12-03-2021.

<sup>50</sup> O.O. Adeyemi, ‘Corruption and Local Government Administration in Nigeria: A Discourse of Core Issues’  
accessed on 12-03-2021.

<sup>51</sup> Samba, *op.cit* at 104

<sup>52</sup> J.M. Elegido, *Jurisprudence* (Spectrum Books Limited, 2002)19

<sup>53</sup> A. Ross, ‘Natural Law Forum’ American Journal of Jurisprudence, <[academic.oup.com/ajj](http://academic.oup.com/ajj)>article-pdf>ajj-5-160>  
accessed on 15-10-2020.

establishment of social contract and positivist law.<sup>54</sup> This was why natural law was attributed to, as key component of the United States Declaration of independence in 1776; the French Declaration of the Rights of Man and the Citizen, 1789; the Universal Declaration of Human Rights in 1948; the Convention on Human Rights by the Council of Europe in 1953, and African Charter on Human and People's Rights, 1981.<sup>55</sup>

From ancient Greece era through Aristotle, Plato, Stoic, Carlyle and major religions of the world, steered by philosophers like Saint Paul, Cicero, Thomas Aquino and Abu Rayhan Al-Biruni, Natural law has always been given a superior pedestal to positivist or man-made laws.<sup>56</sup> Although Plato hardly used the phrase "natural law" but his concepts contained some of the elements found in many natural law theories, where he saw the ideal community as "a city which would be established in accordance with nature".<sup>57</sup> Emphasizing superiority of natural law over all man-made laws, Aristotle canvassed that what the law commanded vary from place to place but what was "by nature" should be the same everywhere, stressing that natural law's kind of justice is a specie of political justice, especially the scheme of distributive and corrective justice under the best political community.<sup>58</sup> This explains why Aristotle said, aside the "particular" laws that each people have set up for themselves, there is a "common" law that is according to nature, which he classified as the Universal Law of Nature.<sup>59</sup>

From this perspective, natural law has been perceived by some religious scholars and historians like Carlyle, Cicero, Augustine and several others to amplify Saint Paul's Epistle to the Romans, in which he stressed existence of superior law of reason over and above human made laws.<sup>60</sup> As he put it:

*For when the Gentiles which have not the Law do by nature the things contained in the law, these, having not the law, are a law unto themselves which show the work of the law written in their hearts, their conscience also bearing witness, and their thoughts are meanwhile accusing or else excusing one another.*<sup>61</sup>

Placing interpretation on this letter of St. Paul, Carlyle, an intellectual historian said:

*There can be little doubt that St. Paul's words imply some conception analogous to the "natural law" in Cicero, a law written in man's heart, recognized by man's reason; a law distinct from the positive law of any State, or form, which St. Paul recognized as the revealed law of God.*<sup>62</sup>

That is what the Stoics refer to as "divine spark" dwelling within humans which helps them to live according to nature.<sup>63</sup> As Coke put it, it is the law of nature by "which God at the time of creation of the nature of man infused into his heart, for his preservation and direction" by which he suggested that law of nature was before any judicial or municipal law.<sup>64</sup> This is why Cicero opined that both justice and law originate from what nature has given to humanity, the embrace of human mind which obliges every human to contribute to the general good of the larger society.<sup>65</sup> This seemed to influence Fortescue's definition of law as "a sacred sanction

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<sup>54</sup> *Ibid.*

<sup>55</sup> R.S. White, 'From Natural Law to Natural Right' <[link.springer.com/chapter/10](http://link.springer.com/chapter/10)> accessed on 24-03-2021; Wikipedia, 'Natural Law' <[en.m.wikipedia.org/wiki/NaturalLaw-BrehonLaw](http://en.m.wikipedia.org/wiki/NaturalLaw-BrehonLaw)> accessed on 15-10-2020; J.N. Samba *Fundamental Concept of Jurisprudence* (Bookmakers publishing, 2007)

<sup>56</sup> Samba, *op.cit*

<sup>57</sup> *Ibid.*

<sup>58</sup> Stanford Encyclopedia of Philosophy, 'Aristotle's Political Theory' <[plato.stanford.edu/Aristotle-politics](http://plato.stanford.edu/Aristotle-politics)> accessed on 15-10-2020

<sup>59</sup> Wikipedia, 'What is Rhetoric?' <[en.m.wikipedia.org/wiki/Rhetoric](http://en.m.wikipedia.org/wiki/Rhetoric)> accessed on 15-10-2020; T. Burns, 'Aristotle and Natural Law' <[www.researchgate.net/publication...](http://www.researchgate.net/publication...)> accessed on 25-03-2021.

<sup>60</sup> The Holy Bible, Romans Chapter 2 verses 14-15.

<sup>61</sup> *Ibid.*

<sup>62</sup> Carlyle T. and R. Owen, 'Natural Supernaturalism' <[www.cambridge.org/core/books/nat...](http://www.cambridge.org/core/books/nat...)> accessed on 15-10-2020.

<sup>63</sup> P.A. Vander-Waerdt, 'The Stoic Theory of Natural Law' <[Philpapers.org/rec/WAESTST](http://Philpapers.org/rec/WAESTST)> accessed on 15-10-2020.

<sup>64</sup> E. Coke, 'Sir Edward Coke on the Natural Law' <[Calvinistinternational.com/2016/08/30](http://Calvinistinternational.com/2016/08/30)> accessed on 15-10-2020; <[casetext.com.../D.MD/2020/March](http://casetext.com.../D.MD/2020/March)> accessed on 15-10-2020.

<sup>65</sup> P. Meany, 'Cicero's Natural Law and Political Philosophy/Libertarianism' <[www.libertarianism.org/columns/cice...](http://www.libertarianism.org/columns/cice...)> accessed on 15-10-2020.

commanding what is virtue (honestia) and forbidding the contrary".<sup>66</sup> It is for this reason Cicero adopted the view that law "ought to be a reformer of vice and an incentive to virtue... which we ought to cultivate ..... for mutual benefits".<sup>67</sup> As he asserted:

*There is indeed a law, right reason, which is in accordance with nature, existing in all, unchangeable, eternal, commanding us to do what is right, forbidding us to do what is wrong. It has dominion over good men, but possessed no influence over bad ones. No other law can be substituted for it, no part of it can be taken away, nor can it be abrogated altogether. Neither the people or the senate can absolve it. It is not one thing at Rome and another thing at Athens; one thing today and another tomorrow, but it is eternal, immutable for all nations and for all time.*<sup>68</sup>

This, no doubt is why philosophers like Augustine of Hippo took a view that upon the superiority of natural law above human law, the primary place of a State is to be bound to natural law as an institution whose purpose is to assist in bringing its subjects to true happiness.<sup>69</sup> It is from the foregoing that various scholars present natural law as higher law to which every other law must conform to be valid;<sup>70</sup> as a norm which limits the authority of the political order to make law because all law making must conform to it to be valid;<sup>71</sup> ideal values which mankind strives or aspires to attain;<sup>72</sup> as the laws of God and therefore of divine origin.<sup>73</sup> Natural law philosophy therefore asserts that there is an essential connection between law and morality and that it is "superior to man-made laws because it represents God's will, supremely good and providing a touchstone for determining the justness of man-made law."<sup>74</sup> In its intrinsic point of view therefore, natural law as a conscience-pointed philosophy is antithetical to emphasis on class differences and exploitation as in the Marxian Philosophy.

Seeing morality as a constituent of natural law, Ladan asserted that:

*Laws do not exist in a vacuum, but are found side by side with moral codes of greater or less complexity in all definiteness. The relationship of law to moral rules and standard is obviously one of great and abiding importance in every human society.*<sup>75</sup>

Approaching natural law and all its constituents as one indispensable scale upon which all positivist laws must be tested, Del-Vechio canvassed that:

*Neither the customs of the society nor the command of the rulers could be accepted as the ultimate justification or reason for law to merit obedience; rather, there should be an extra-legal element to which law must conform if it will be accepted as just and good.*<sup>76</sup>

And that position is pivotal to this paper, seeking to show how ineffectual State legislations have become in contemporary times in handling social challenges that now tend to cripple the principle of social contract, especially in an economically challenged nation like Nigeria. Subscribing to the need to import such "extra-legal element" as an inevitable part of law to ensure effect, Omereghe maintained that:

*Laws are not always right or is it always right to obey law. Laws based on racial discrimination for example are wrong; any oppressive law or unjust law is morally*

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<sup>66</sup> E.F. Jacob, 'Sir John Fortescue and the Law of Nature' <[medium.com](http://medium.com)>atAMLAALawyerNow>w...> accessed on 15-10-2020.

<sup>67</sup> M.T. Cicero, 'De re Publica' <[www.gutenberg.org](http://www.gutenberg.org)>[ebooks...](http://www.gutenberg.org/ebooks/...)> also in <[en.m.wikipedia.org/wiki/De-re-publica](http://en.m.wikipedia.org/wiki/De-re-publica)> accessed on 15-10-2020.

<sup>68</sup> *Ibid.*

<sup>69</sup> St. Augustine, 'St. Augustine of Hippo: The Natural Law as the Eternal Law of Man' <[Lexchristianorum.blogspot.com](http://Lexchristianorum.blogspot.com)>2010/03> accessed on 15-10-2020.

<sup>70</sup> Samba, *op.cit* at 45.

<sup>71</sup> Elegido, *op.cit.*

<sup>72</sup> M.T. Ladan, *Introduction to Jurisprudence* (Malthouse Press Limited, 2009) 42

<sup>73</sup> Samba, *op.cit.*

<sup>74</sup> Beredugo, A.J., *Nigerian Legal System* (Malthouse Press Limited, 2009) 3

<sup>75</sup> Ladan, *op.cit*

<sup>76</sup> Del-Vechio, *op.cit*

*wrong. Law can therefore not be taken as a moral standard since some laws do conflict with morality.*<sup>77</sup>

In the end, the major question this paper seeks to answer is how a rebirth of natural law could transform the state of the rule of law in the face of break-down of law and order, coupled with the barrage of corruption and social vices that have defied all legislative and administrative measures in the Nigerian special situation. This is what informs the next sub-topic in this paper on the re-birth of natural law philosophy.

### **Revival of Natural Law**

The history of Natural Law over the years has been a chequered one. It has had several revival era with the last major one arising from the fall-out of the social problems created by the Second World War. It has been resorted to in England by the teachings of Hobbes as a shield and later, by John Locke as a weapon to counter perceived failures of those in power, towards change of *statusquo*.<sup>78</sup> It has been exploited as humankind's instrument of reaction to man's inhumanity, in the manner the Second World War was prosecuted, which eventually resulted in the birth of United Nations through its Charter; the crafting of Universal Declaration of Human Rights and all other Conventions within the Bill of Rights.<sup>79</sup> In Nigeria, relics of natural law are enshrined in her Constitution both as Fundamental Human Rights<sup>80</sup> and as Fundamental Objectives and Directive Principles of State policy,<sup>81</sup> as a measure towards improving the wellbeing of the citizenry. The philosophy of natural law is equally evident as the pivot upon which the concept of Rule of Law in England,<sup>82</sup> due process in the United States<sup>83</sup> and the framework of Nigerian Constitution limiting exercise of powers of each arm of government within the framework of the grundnorm, are all built.

One argument of the positivists against a holistic adaptation of natural law philosophy over the years is its flexibility that makes it susceptible to manipulation by those who steer affairs of State at each given time.<sup>84</sup> Positivists who confer upon the political order the totality of authority to make law insist that there shouldn't be any connection between law and constituents of natural law because, they are too metaphysical and scientifically untestable in their *apriori* form.<sup>85</sup> But that, in the view of this paper amounts to looking at natural law from only one perspective. Marriage for instance has several negative sides but its place as a strategic social institution is never in doubt when viewed from its strongest points. Similarly, the word 'abuse' has been known to apply to the way society mistreats children or administer drugs but the world has not banned child bearing or lawful administration of drugs till date.

Natural law's strongest point is that it has always been used as a catalyst, both for facilitating quest for change and for transformation of every legal system over the years.<sup>86</sup> From the old Roman Law of the Justinian era, to the reaction of human kind to the inhumanity of man to man in the prosecution of various wars, it has always been obvious that total avoidance of tenets of natural law theory in any legal system, be it capitalist or free-economy regime or even the socialist ideology has never done humanity any good.<sup>87</sup> This is why it is counseled that the other side of natural law philosophy must be explored by positivists, sociological and even Marxist theorists who have the penchant to react against natural law philosophy in view of the repeat of factors that endeared revival of natural law in the past, in the present dispensation. They would need to see natural law, not necessarily as a body of actual law enacted or interpreted and enforced by Courts but from a humanistic spectacle by which Legislatures, Judges and Jurists must look at the validity and performance of all laws. It

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<sup>77</sup> J.J. Omereghe, *An Introduction to Philosophical Jurisprudence* (Joja-Educational Research and Publishers Limited, 1994)

<sup>78</sup> H. Ramsay, 'Revival of Natural Law Theory' <<https://onlinelibrary.wiley.com/doi/j.1468-0...>> accessed on 16-10-2020.

<sup>79</sup> D.P. Prabhu, 'The Revival of Natural Law and Value oriented Jurisprudence' <<https://www.grkarlawlibrary.yolasite.com>>... accessed on 12-10-2020; D. Mirabella, 'The Death and Resurrection of Natural Law' <[www.murdoch.edu/-documents](http://www.murdoch.edu/-documents)> accessed on 16-10-2020.

<sup>80</sup> Constitution of the Federal Republic of Nigeria, 1999 as chapter two

<sup>81</sup> *Ibid* at chapter Two

<sup>82</sup> R.P. George, 'Natural Law, The Constitution, and the Theory and Practice of Judicial Review' <[ir.lawnet.fordham.edu/viewcontent](http://ir.lawnet.fordham.edu/viewcontent)> accessed on 16-10-2020.

<sup>83</sup> J.A.C Grant, 'Natural Law Background of Due Process' <[www.jstor.org/stable/pdf](http://www.jstor.org/stable/pdf)> accessed on 16-10-2020.

<sup>84</sup> Samba, *op.cit* at p.45.

<sup>85</sup> *Ibid*.

<sup>86</sup> L.I. Shodhganga, 'Natural Law Philosophy' <[shodhganga.inflibnet.ac.in/bitstress](http://shodhganga.inflibnet.ac.in/bitstress)> accessed on 16-10-2020.

<sup>87</sup> *Ibid*.

should be viewed as an embodiment of several inherent values of morality, justice, equality, ethical thoughts and reasoning with its characteristic adaptability to novel challenges of each dispensation.<sup>88</sup> This is one aspect of natural law that endears it to customary law pundits, making it a more adaptable system than laws arising under conventional Jurisprudence. In a typical African society as exist in Nigeria, the people's notion of law is dictated by their values per time per time, a notion that is antithetical to positivist philosophy which insists that every law, including bad laws remain valid law until they are reversed by a duly constituted legislative process.<sup>89</sup> This is what marks African Jurisprudence as peculiar to African setting, which is commendable as a philosophical platform for solving social challenges in contemporary world.

Indeed, attempt to side-line natural law in a system which adopts the principle of Equity as part of her legal system as it is in several nations of the world is to say the least, a structural hypocrisy in the constituents of law of such system.<sup>90</sup> As far back as 1066, through the era of Chancellorship of Lord Nottingham in 1673, to the Judicature Act of the 1870s, into the post Second World War era, it was obvious that abiding by the stringent and stark rules of common law worked injustice between parties before the Court.<sup>91</sup> That accounted for why aggrieved parties appealed to the king for his intervention, giving rise to the Court of Exchequer, manned by the Secretary of State, as Chancellor of prerogative Court, with prerogative jurisdiction under the king.<sup>92</sup> This branch of the law, rooted in natural law, emphasized fairness and justness as objective of the law by which element, distinctive ethical values were injected into legal norms. It represented the moral standard of the society, seeing morality as essential part of legal norms.<sup>93</sup>

Thus, till date, equity, which is part and parcel of laws of various jurisdictions all over the world, including Nigeria, continues to concern itself with the observance of conscience, fairness, equality and the protection of relationship of trust and confidence.<sup>94</sup> In Nigeria, there is a place accorded morality and religion within its grandnorm, but these concepts operate, or so they seem, to operate parallel to positivist laws, with positivism taking precedence over morality and all religious principles from where *justice*, *justness* and fairness have their domicile. But this ought not to be so because, whatever equity, the handmaid of natural law philosophy imports should form the bedrock of each nation's laws. Indeed, a situation where State laws, in what the Marxist theory describes as engendering for the rich getting so stupendously rich, while the poor remain hopelessly poorer is against natural law principle and *a fortiori*, inequitable.<sup>95</sup> For such reasoning, it follows that corruption, kidnapping, cultism and all other restive indices of contemporary world in all their ramifications are antithetical to natural law philosophy. In the end, considering inability of positivist laws to arrest the negative trend of social challenges in this dispensation in a manner that threatens corporate existence of various Nation States as it is in Nigeria, insistence on sidelining natural law philosophy will be counter-productive.

### Conclusion and Recommendation

With particular reference to the realities of social challenges in Nigeria, this paper on Marxist Dialectics explored revival of natural law philosophy to succor the Nigerian State from abolition within Marxian postulations. The paper forayed the threat of corruption to Nigeria's sovereignty and found that laws made on positivist philosophy alone would only devolve Nigeria to the precipice of a failed state in no distant future, not reminiscent of Marx postulation and the superstructure of Marx materialist dialectics as seen in several countries in contemporary. On this note, the paper recommends as follows:-

- a. That extremist as Marx thesis on Economic Determinism may seem, including his thoughts on abolition of the State and the law but Marx dialectics in this behalf do than have played out differently in the present dispensation, in total failure of rule of State and the State in several Nation state.
- b. That Marx postulation on abolition of State and the law seem unrealistic in the present dispensation where the capitalist ruling class, stop at nothing to strengthen the State and the Law as measures to secure their hold on power at all cost.

<sup>88</sup>R.W.M. Dias, *Jurisprudence*, 5<sup>th</sup> edn. (Butterworths, 1985)65.

<sup>89</sup> Samba, *op.cit* at 45.

<sup>90</sup> S. Petch, 'Equity and Natural Law in the Ring and the Book' <<https://www.org/stable/40003669>> accessed on 20-11-2020.

<sup>91</sup> R.W.M. Dias, *Jurisprudence*, *op.cit*

<sup>92</sup> J.O. Fabunmi, *Equity and Trusts in Nigeria*, 2<sup>nd</sup> edn (OAU Press Ltd)2.

<sup>93</sup> S. Kumar, 'Equality, Equity and Justice' <<https://medium.com/equality-equality-and-justice...>> accessed on 20-11-2020 at 6.28am.

<sup>94</sup> L. Erikson; S. Isemo; H. Abrahamson; 'On Justice, Fairness and Equality in Gothenburg' <<https://www.mistrarbanfutures.org/files>> accesses on 20-11-2020.

<sup>95</sup> S. Mwanzia, 'Marxist Perspectives of Law in Capitalist Society: A Reflection, Inequality and Ideology?' <<https://www.ssm.com>>...> accessed on 20-11-2020.

- c. That no matter the perception of antagonists of natural law philosophy, it is obvious that failure of dominantly positivist philosophy in most jurisdictions within International Community in contemporary world exhibit the same index that warranted a return to the need for rebirth of natural law in the past, calling for similar measure in view of challenges to the Nigerian nationhood in the C21<sup>st</sup>.
- d. That natural law this time around may not be in the nature of legislated laws but conscience-embellishment of whatever philosophy of law adopted by every State, in the nature of a bridling quotient of Equity to common law.

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