

IGWEBUIKE AND POLARITY OF PHILOSOPHY OF LAW

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Abstract

This paper attempt a resolution of the apparent polarity occasioned by naturalism and positivism in the philosophy of law and this I intend to achieve using the instrumentality of the complimentary temper of the philosophy of Igwebuiké. Consequently, this paper is divided into five sections: the first section concerns itself with the question of the polarity of positivism and naturalism in the philosophy of law; the second section deals with complementarity as the essence of Igwebuiké philosophy; the third section attempts a resolution of the polarity of the philosophy of law using the philosophy of Igwebuiké. The fourth and the final section evaluate and bring the discourse to a close. An attempt at resolving this polarity has taken this paper through the philosophy of Igwebuiké which argues for the harmonization of opposites and the treatment of the same in complementary terms. Following from the submission of Igwebuiké philosophy which holds that there is power in numbers and that there is no task that can defile the collective capacity of the a people working within the dictates of Igwebuiké, this paper argues that the fusion of the apparent contraries to form a continuum is imperative. The conclusion that is reached in the paper therefore is that, for law and the philosophy of law to achieve one of its major tasks which is social change and development, the connection or affiliation in solidarity and complementarity by both the naturalists and the positivists schools of thought in legal philosophy on the one hand and the conception of morality and law as two sides of the coin of social change and control is both imperative and timely.

Keywords: Igwebuiké, Phillosophy, Kanu, Polarity, Philosophy of Law, Jurisprudence, Resolution

Introduction

The Philosophy of law or Jurisprudence seeks to answer basic questions about law and legal systems, such as ‘what is law?’, ‘what are the criteria for legal validity?’, what is the relationship between law and morality?’, and many other similar questions. More often it aims to distinguish law from other systems of norms and this bothers around morality, ethics and other social convention. Regarding law and morality, legal positivists have insisted on a morally neutral concept of law, wherein a legal system consists of posited rules ascertainable by reference to factual criteria. The natural law tradition, by contrast, draws

attention to law's rootedness in notions of justice and the common good. Modern debates have often centred on the process of adjudication, in particular upon the question of the extent to which judges may properly rely upon their personal moral judgement, and how far they are limited to the application of technical legal rules (Simmonds 403). The above is the background to the ambivalence nature of the philosophy of law as well as what this paper conceives as the polarity of the philosophy of law.

This paper attempt a resolution of the apparent polarity occasioned by naturalism and positivism in the philosophy of law and this I intend to achieve using the instrumentality of the complimentary temper of the philosophy of *Igwebuike*. Consequently, this paper is divided into five sections: the first section concerns itself with the question of the polarity of positivism and naturalism in the philosophy of law; the second section deals with complementarity as the essence of *Igwebuike* philosophy; the third section attempts a resolution of the polarity of the philosophy of law using the philosophy of *Igwebuike*. The fourth and the final section evaluate and bring the discourse to a close. Now let us briefly x-ray Polarity of Naturalism and Positivism perspective in Jurisprudence.

Polarity of Naturalism and Positivism in the Philosophy of Law

At one end of the pole is Naturalism (henceforth referred to as the natural law or natural theory), the proponents are namely, Cicero, Aristotle Aquinas and Finnis. The most influential writer within the traditional approach to natural law after Cicero is Aquinas, and he (Aquinas) is undoubtedly one of the most celebrated proponents of Natural law with his writings in the thirteenth century. He identified four different kinds of law: the eternal law, the natural law, the divine law, and human (positive) law. For him, the important categories are natural law and positive law. According to him, genuine or just positive law is derived from natural law. This term "natural law" has been interpreted differently by different people at different times. It connotes ideals which guide legal development and administration. It could also pass as a basic moral quality in law which prevents a total separation of the 'is' from the 'ought', or a method of discovering perfect law, the content of which is deducible by reason.

The Natural law theorists holds the view that, any human law that violates the universal principles or moral codes of a person should not be considered valid considering the fact that different aspects of moral reason are brought immediately to his awareness by the voice of his *conscience*, which approves or disapproves, advises, warns, urges, impedes, praises, blames, and summons our

retrospective judgments on a decision regarding conduct in the sphere of good and evil. (Njoku 98). The Natural law is based on value judgments which emanate from some absolute source and which are in accordance with man's rational nature, the principles of natural are immutable, eternally valid and can be grasped by the proper employment of human reason. These principles are universal and when grasped they must overrule all positive law, which will not truly be law unless it conforms to natural law'. In sum, legal naturalism or the Natural law theorists blended morality and law. There is no clear difference between law and morality, law and justice etc. They claim that every human law shall have moral background. This is because morality is one expression of natural law (102).

At the other side of the divide is positivism (henceforth referred to as legal positivism), the term 'positivism' derives from the Latin *positum*, which refers to the law as it is laid down or posited (Wacks 18). Legal positivism is a school of thought mainly developed by 19th and 20th century legal thinkers such as Jeremy Bentham, John Austin, Hans Kelsen, H.L.A Hart and Joseph Raz (228). Legal positivism is often defined as a doctrine that is in radical and polemical contradiction to natural law theories. Legal positivism, as opposed to natural law theories, assumes that "there is no other law but positive law": the argument is that the existence and validity of law rests upon the mere fact of its being enacted by a historically determined human legislator (or norm-issuer in a broad sense). Laws are sanctions backed by threat or command Laws are commands of human beings and there is no necessary and logically connection between law and morals – that is, between law as it is and as it ought to be.

Broadly speaking, "the core of legal positivism is the view that the validity of any law can be traced to an objectively verifiable source. Put simply, legal positivism, like scientific positivism, rejects the view held by natural lawyers that law exists independently from human enactment. The highest common factor among legal positivists is that the law as laid down should be kept separate for the purpose of study and analysis from the law as it ought morally to be. In other words, that a clear distinction must be drawn between 'ought' (that which is morally desirable) and 'is' (that which actually exists)" (19). This theory distinguishes the question whether a rule is a legal rule from the question whether it is a just rule, and seeks to define law, not by reference to its content but according to the formal criteria which differentiate legal rules from other rules such as those of morals, etiquette, and so on. The Positivists opines, there is no necessary connection between law and morality and force of law comes from some basic social facts. As far as positivism within the context of the legal science is concerned, law is something

which is posited and stipulated and it is made in accordance with socially accepted rules. Both law and morality are normative disciplines; as normative disciplines, they attempt to prescribe and control behavior in a certain direction. Normative statements state what one has or may not have obligation to do. Law and morality are aspects of social phenomenon or social control of behavior in a society for harmonization or peaceful co-existence.

To this end, Plato and Aristotle merged law and morality. In their theses, both man and state seek perfection. And the highest perfection can be achieved in the state. Personal virtues are the business of the individual as well as the state or social body. Laws are enacted to bring about the best moral life in the individual and in the state. Aquinas claims that there is a necessary connection between law and morality. This simply means that there is a connection between what is good, what is morally right and just, and what comes naturally; hence there is something universally available out there to guide human conduct, the requirements of which can be deduced by reason (20). The view stresses that there is a necessary connection between such that a law flouts the higher principles of morality- the natural law principles is not law, since the end of law is to be good and make citizens good. A law that is just is simply good, and an unjust law is an aberration of law, though it may be good in some particular respect. Furthermore, Lon L. Fuller concurs with the view that there is a necessary connection between law and morality (89). Law must contain what he calls the 'inner morality', which, according to him, are the principles of natural law. He opines that human activity should not be evaluated from the point of view of social fact but against the background of the purpose it seeks to accomplish. Law is certainly a system of rules, but the element of purpose should criticize the rule want to enact. There is a purpose in enacting a rule using it to guide action (90).

As I draw to the conclusion of this section which most part basically concerned itself with a discourse on the polarity of naturalism and positivism legal philosophy or philosophy of law, it must be noted that the polarity as well as the ambivalent nature of the philosophy of law ramifies the two points: the first is the source factor where the natural law theorist have argue that nature and reason are at the background of law while the positivist argue that law is either a command of the sovereign (Jeremy Bentham), order backed by threat (Austin), social rules put in place to control the behaviours of citizens in the society (H.L.A Hart), social facts (Joseph Raz) amongst others. The second point of disagreement which is central to this paper is the fact of whether morality and law are intrinsically connected to each. In this regard, while naturalism argues

that the law and morality are interwoven and intrinsically connected to each other, positivism on the contrary denies any connection between the two of them. It is this polarity that this paper seeks to resolve within the prism of the *Igwebuike* philosophy.

Understanding Complimentarity as the Essence of *Igwebuike* Philosophy

Complimentarity is the thesis that opposites complement each other in the final third. The philosophy of *Igwebuike* was developed and championed by Anthony Ikechukwu Kanu, a Professor at the Tansian University, Umunya- Nigeria. It is a philosophy of harmonisation that emphasizes and elevates the imperativeness of a mutual dependence and complementation of reality. Kanu asserts:

Igwebuike is the modality of being in African philosophy. It is from the Igbo composite word and metaphor *Igwebuike*, a combination of three words. Therefore, it can be employed as a word or used as a sentence: as a word, it is written as *Igwebuike*, and as a sentence, it is written as, *Igwe bu ike*, with the component words enjoying some independence in terms of space. The three words involved: *Igwe* is a noun which means number or population, usually a huge number or population. *Bu* is a verb, which means *is*. *Ike* is another verb, which means *strength* or *power*. Thus, put together, it means 'number is strength' or 'number is power', that is, when human beings come together in solidarity and complementarity, they are powerful or can constitute an insurmountable force or strength, and at this level, no task is beyond their collective capability. *Igwebuike* is, therefore, a philosophy of harmonization, and complementation. It understands the world immanent realities to be related to one another in the most natural, mutual, harmonious and compatible ways possible (13-14).

From the above, one can decipher the fact is a philosophy of complementarity. It is also a philosophy that seeks to elevate mutual relations and togetherness. To quote Kanu, "*Igwebuike* provides an ontological horizon that presents being as that which possesses a relational character of mutual relations" (14). As an ideology, he noted that *Igwebuike* rests on the African principles of solidarity and complementarity. It argues that 'to be' is to live in solidarity and complementarity, and to live outside the parameters of solidarity and complementarity is to suffer alienation. 'To be' is 'to be with the other', in a community of being. He based the philosophy of *Igwebuike* on the African

worldview, which emphasizes togetherness and oneness. Quoting Iroegbu, he averred that the African world view is characterized by a common origin, worldview, language, shared culture, shared race, colour and habits, common historical experience and a common destiny (14). The African worldview, therefore, as he further argues, is ruled by the spirit of complementarity which seeks the conglomeration, the unification, the summation of fragmented thoughts, opinions and other individualized and fragmented thoughts and ideas. It believes essentially that the whole is greater than the corresponding parts. It is also a view that maintains that by the coming together of the individual or parts, a viable and sustainable whole will emerge, and by this, the parts will get to the brim purpose of their existence (14).

The philosophy of *Igwebuike* is an ideology that is postulated on the principle of solidarity and complementarity; against the conception that there is a unified African worldview; complementary reflection maintains that traditional African societies are characterized by the dominance of diversities of thought system of which the complementary trend is one of the most pronounced. Thus the idea that the universe is constituted of units of mutual complementary interacting forces within the framework of the whole and in a future referential dimension constitutes one of the central insights of traditional Africans. Most African philosophers maintain that the universe in general is constituted of units of dynamic mutual interacting forces at all levels of determination. These units relate to themselves in an infinite complementary harmonious mode. This is the case with human experience and action in general and with regard to numerous issues of general philosophical interest as can be articulated in such equivalent concepts as; human personality, causality, freedom, necessity, truth, good and evil, space and time, ethics and morality, religion and meaning, the idea of living and dead, law and morality etc. Kaboha asserts:

“a common characteristic of traditional African societies is that they did not separate consciously the various aspects of life and social behavior into discrete compartments or treat them as possible areas of study or contemplation. All areas of life were seen and treated as part of an integrated whole which also include all nature. In a traditional African mind this does not lead to confusion, but shows how the African derives his ideas and way of life from the integration that he sees in the diversity of nature around him” (Kaboha, 1992).

The complementary character of reality from the Igbo philosophy of *Igwebuiké* can be compared to Plato's ideal state where there are three major classes, corresponding to the three parts of the soul. The *guardians*, who are philosophers, govern the city; the *auxiliaries* are soldiers who defend it (A military class, having courage and physical strength, is to defend the state); and the lowest class comprises the *producers* (farmers, artisans, etc). The guardians and auxiliaries have the same education, which begins with music and literature and ends with gymnastics. Furthermore, the rulers (the philosophers) the guardians (the soldiers) and the artisans (the labourers) should often work together in one accord with each person doing his or her work efficiently to ensure a peaceful co-existence in the state. According to Plato, if any part refuses to do what he/she is ought to do, there is bound to be a problem in the society (14). Real potentials of individuals and society are actualized in complementarity than as individuals.

Igwebuiké: Resolving the Polarity of the Philosophy of Law

In the opening paragraphs of this paper, it was mentioned that the polarity of the philosophy of law, or the ambivalent nature of the philosophy of law revolves round the face up between the natural law theory (here referred to as naturalism) and the legal positivism (here referred to as positivism). This high point of the face up is their respective thesis on the kind of relationship that exists between morality and law. While legal naturalism as well as all its proponents holds and defend the blend of morality and law, the positivists in radical and polemical contradiction to the natural law theory are unanimous in arguing that there exist no necessary connection as it were, between law and morality and that the forces of law come from certain basic social facts, they are commands of the sovereign and are devoid of elements of morality in its entirety.

While the positions of these groups are merited in themselves and also have flaw inherently in the logic that defines them, it remains to argue for a complementary and eclectic position the fuses the element of both schools. It must be noted at the onset of this argument that naturalism and positivism are contraries which within the context of two value Aristotelian logic cannot be both true. In this sense, one can infer that if one is true the other must be false. Be that as it may, this paper argues that conversely, contraries fuse together to form a continuum. At the background of this argument for an eclectic and complementary philosophy of law that resolves the polarity of the naturalistic and the positivist school is the philosophy of *Igwebuiké*.

As we have argued in the preceding section, *Igwebuike* emphasizes the strength and power of number. *Igwebuike* as Kanu puts it translates into “number is strength or number is power”. It also emphasizes solidarity and complementarity based on the thinking that, when human beings or in this case, working ideologies come together in harmony, there are as powerful and exerts so much influence and strength that no task or aspiration is beyond their collective capacity. Now, law has been recognized as a vehicle for social change. In fact, only few doubt the central role of law in our social, political, moral, and economic life (Wacks, xii). And if law is a vehicle of social change as Wacks have argued above, it remains true that the task of changing the trajectory of the society is both massive and demanding.

While it is true that the philosophy of law is useful if it aids and provide robust investigations explaining valid law, solve problems concerning the application of law, and, eventually, seeks to answer basic questions about law and legal systems, such as ‘what is law?’, ‘what are the criteria for legal validity?’, what is the relationship between law and morality?’, it also provide suggestions concerning the development of the same. It remains to say operating at the second order is quite tasking and hectic. Hence, to do so successfully, a complementary temper within the context of the philosophy of *Igwebuike* is imperative.

The fact that law is right reason in agreement with nature, the fact that it is of universal application, it is unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions as Cicero will argue does not negate the fact that laws can also with the passing of time, be commands of the sovereign, social rules to control the behaviours of people according to H.L.A Hart or orders backed by sovereign as defined by John Austin. One can argue that in whatever way naturalism and positivism conceives of law, it is geared towards the change of the society and the alteration of the status quo for good and as such should be view within the prism of complementarity which is at the background of the philosophy of *Igwebuike*.

Now, regarding the major area of divergence between naturalism and positivism in the philosophy of law which as we have earlier stated, is the question of the relationship between morality and law, it must be stated within the ambit of the philosophy of *Igwebuike* that the existence of morality and law is pivotal to the task of societal change and development which the philosophy of law seek to foster. Hence, rather than argue for the separation or disarticulation of morality from law and the promulgation of laws that are devoid of moral inclinations, a

harmonization of the twin concepts in view of their importance for societal change is timely. With this harmonization, both morality and law will be viewed from the perspective complementarity and the fact that they both serve the same purpose, since both concepts that is 'law and morality' are normative terms. The above position is hinged on the fact that morality can be a body of standards or principles derived from the code of conduct which can also be codified as laws concerning right or good or bad, within the context of the human person while laws are set of rules that reflects the social condition of the community and implies coercion more physical than morality. Consequently, the position that law is devoid of morality in a complete sense is reductionist.

The point that is reached in this paper is that in whatever way the relationship between morality and law is construed, it feels safer to argue for their complementarity and their harmonization for the social change and development than to do otherwise. In the sense, despite being contraries, the fusion of morality and law serves as a missing link of reality within the context of the philosophy of law and forms a continuum. Morality in whatever form it is learned or acquired; law, no matter the source, be it a command of a sovereign or an order backed with force are geared towards the betterment of the social and for social change. Hence this paper calls for the relegation of this dichotomy and conversely, calls for the harmonization of law and morality for societal change and development.

Conclusion

As I draw to the conclusion of this attempt at resolving the polarity as well as the ambivalent nature of the philosophy of law using the instrumentality of the philosophy of *Igwebuiké*, a number of positions have been raised and argued in this paper and a rehearsal of a few of them is here considered necessary. One, the philosophy of law is polarize along the lines of naturalism and positivism and the major area of discord between these schools hinge on the fact of whether there exist some form of relationship between law and morality. Two, while the naturalism holds and argue that there is an intrinsic relationship between the law and morality, the positivist argue that there is no link as it were between the morality and law. An attempt at resolving this polarity has taken this paper through the philosophy of *Igwebuiké* which argues for the harmonization of opposites and the treatment of the same in complementary terms. Following from the submission of *Igwebuiké* philosophy which holds that there is power in numbers and that there is no task that can defile the collective capacity of the a people working within the dictates of *Igwebuiké*, this paper argues that the fusion of the apparent contraries to form a continuum is imperative. The conclusion that

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