

## **Repositioning Lockean idea of natural rights: Nigerian Experience**

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### ***Abstract***

*Having natural rights by individuals is one of the oldest philosophical questions confronting humanity. This brings divisions in intellectual postulations among political scholars. For ages, nearly every scholar feels that every individual has certain inalienable rights that are beyond societal control. To this end, John Locke, A British philosopher confirms the existence of such rights. To Locke, the beauty of these natural rights is that they are universal, inherent, equal and inalienable because they are given to man by God. They may be suspended, rightly or wrongly, at various places and times, but the idea of these inalienable rights cannot be taken away. Hence, one can no more lose these rights than one can stop being an individual. Locke's postulations have left many contemporary scholars with sceptic mind because allowing individuals completely with natural rights will return the society back to a state of nature where everyone will be struggling to protect these rights. This paper focuses on the philosophy of natural rights in John Locke's political theory in view of exposing its shortfalls and possible applicability in current circumstances focusing on the Nigerian State. Further, the study targets at dissolving the extremists positions on Locke's philosophy of natural rights. This study therefore concludes that Lockean philosophy of natural rights is not ideal and achievable in contemporary societies like Nigeria because not only that it is*

*theological, it is fallacious and will leave individuals with absolute rights.*

**Keywords:** Right, Law, Nature, Individual, Locke

### **Introduction**

The background to this reflection on repositioning Lockean philosophy of natural rights is with the recent sentencing of Maryam Sanda to death by hanging on 29<sup>th</sup> January, 2020 for stabbing her husband to death at about 3:50 a.m on 18<sup>th</sup> November, 2017. Sanda's condemnation brings reactions among many Nigerians who challenged and condemned the court's verdict on the plea that giving Sanda capital punishment will force Nigeria back to the era of primitivism and as such, that the state has no right to take human life; every Nigerian has the natural right to live his/her life to the fullest until whenever the owner takes it.

The philosophy of natural, individual rights has a long tradition starting from the twelfth century. Natural instinct towards self-preservation and the ideas of self-defence and self-ownership in particular played an increasingly central role in the rights discourse from the thirteenth century onwards and remain central to later theories concerning the rights and duties of individuals and citizens up to the Enlightenment. The moral psychological basis of subjective rights became however politically important towards the early modern age, when the Spanish Scholastics were developing the early concepts of human rights, especially that of liberty (Virpi, 2008).

The doctrine of natural rights comes clearly into philosophical limelight in 17<sup>th</sup> century England for the first time as a coherent theory of government. The concept of natural laws

is used to challenge the divine right of kings, and became an alternative justification for the establishment of a social contract, positive law and government – and thus legal rights – in the form of classical republicanism. Scholars then conceive natural rights as that which are inherent in every rational being. In their dictate, reason demonstrates that there are some human rights which are natural to human beings. These rights are fundamental and there is no account these rights can be eroded. These scholars submit further that natural rights are law of reason that confer certain basic rights upon individuals. The doctrine of natural rights is mostly discussed among political and moral scholars who are of the opinion that the legitimacy of every government rests on the respect that it accords to these rights. Such rights are called ‘natural rights.’

Ontologically, man believes that he is the only creature endowed with certain rights prior to his entry into the society and retains them once he has become member of that society. Literally, these claimed rights are assumed not to be man-made laws instead, they are pre-existing rights which are expressed in the form of natural rights.

Natural rights are the recapitulation of those rights that accrue to men everywhere and at all times for the fact that they are human beings qua beings. In this sense, natural rights are universal. For instance in our society today, certain actions or policies are considered inhuman or unnaturally cruel because these actions do not tally with the so claimed natural rights. Even in international law and jurisprudence, the idea of crimes against humanity is sometimes explained and justified not in terms of positive law, but in terms of appeals to the idea of a ‘higher law’ or ‘natural law’.

Natural law and natural rights coexist. Natural law is primary, commanding respect because it invigorates and stipulates natural rights. It defines the various gifts to exist not only for an individual's own good but also for the good of others with the need to codify these natural rights as civil rights with appropriate legal sanctions to protect these rights against the potential tyranny of individuals, social groups, and the state. These serve to protect or realize essential human attributes, potentials or holdings. To natural rights theorists, natural rights are closely associated within the philosophy or theory of natural law in the sense that nature or God alone regulates the wisdom and the activities of men. Tierney (2007) defines natural law as: - "the law common to all peoples, in that it is everywhere held by instinct of nature, not by any enactment".

The justification of natural rights is backed up with the belief that they are given to individuals by nature, therefore they are not framed by men rather, they are the rational dictates of nature. Boyle (2008) notes that: -

Nature must have given the human being a stable and ever present source to which he might look for a constant supply of goods that nothing save nature with its abundant fruits can provide. There is no need here to bring in civil society. The human being precedes civil society and, prior to the formation of any civil society, must have by nature the right to sustain his life and care for his body.

It appears that natural rights are beyond any human or societal postulations, they are with an individual the day he was born into

the earth. Natural rights involve lawyers, as well as philosophers and theologians. The popular advocate of natural rights is John Locke who stands as the gateway in thought between the classical, or traditional style of thinking in relation to Natural Law, and the modern schools of thought. In Locke's opinion, natural rights are given to man by God. But the modern scholars shun Locke's proposition of divine order, and focus primarily upon the nature of man as the source and content of Natural Law. The importance of these modern views is the emphasis upon the community aspects of human society, and the need for law to protect both the community, and the individual's needs within that community. This paper however, focuses on the philosophy of natural rights in John Locke's political theory in view of exposing its shortfalls and possible applicability in current circumstances focusing on the Nigerian state. Further, the study targets at dissolving the extremists positions on Locke's philosophy of natural rights.

### **Features of natural rights**

Jones (1994) in his definition of natural rights states the following as features of natural rights: -

Rights not dependent on the laws or customs of any particular culture or government, and thus, universal, inviolable, imprescriptible, and inalienable. They are inviolable because they are sacrosanct, imprescriptible because they could not be eroded by the passage of time, and inalienable because the holder could not divest himself of them.

Other characteristics of natural rights include: -

- i. Natural rights are non-legal positive rights.
- ii. Natural rights are the pre-political rights individuals possess in the absence of established political authority.
- iii. Natural rights are derived from the traits that human beings possess in common.
- iv. Natural rights are not transferrable

### **Locke's philosophy of natural rights**

Locke (1632-1704) belongs to a 17<sup>th</sup> century movement popularly associated with a group of schoolmen known as 'social contract theorists'. Prominent among these schoolmen are also Thomas Hobbes and Jean Jacques Rousseau. Social contract theorists have in common that individual in order to escape the state of nature, an insecure state of unavoidable war, completely transferred all their natural rights to a political ruler, a State, in order for the State to better protect some more important needs and rights to them. To Tuck (1979): "natural right and the contract were used primarily to explain, and to justify, the increasingly extensive authority claimed by the emergent modern state over its citizens."

Locke, despite the fact he is a social contract theorist, deviated from their general tenets about the supremacy of civil laws. He argues that all individuals were endowed with certain inherent rights. Locke follows the same tradition as that endorsed by the classical philosophers, and Aquinas, in that he looks to the nature of Man as the source of legal obligations. According to Locke (1954): - "Hence, by the bond of law we must mean here the bond of natural law whereby one is bound to discharge a natural obligation, that is, to fulfil the duty which it lies upon one to perform by reason of one's nature, or else submit to the penalty due to a perpetrated crime." Locke, however, looks to God as the

source of law. In doing this, he looks to God as the entity which created and maintains order of all existence.

Locke, in his treatise on *Civil Government* never gives a comprehensive definition of rights instead, he first logically analyses the concept of right in two forms. First, Locke levels an attack on Hobbes whom he claims gives man no sense of natural rights but the right to do everything; to preserve his own life and to kill if necessary. To Hobbes, might, that is, physical power is right. In refuting Hobbes' claim, Locke holds that right is based on reason, not on might. Secondly, this right is known by reason to be equal among all men, and therefore has to be moral. Locke therefore dissolves Hobbes' idea completely that if power is physical, rights will not be equal among men. Locke (2004) considers the basis of right by arguing that men are: - "all the servants of one sovereign Master, sent into this world by His order and about His business." He also notes that those who are under the law have certain obligations to the law. So to fulfil these obligations, individuals have the necessary rights. Through this, Locke sets out with law; the divine law.

This natural divine theory holds that human beings are subject to a moral law. Morality in this sense becomes fundamentally about duty; the duty each individual has to abide by the natural law. To Locke (1980), God is the author of the divine law: -

First, there is the divine law, whereby I mean the law which God has set to the actions of men, whether promulgated to them by the light of nature, or the voice of revelation...This is the only true touchstone of moral rectitude; and by comparing them to this law it is that men judge of the most

considerable moral good or evil of their actions; that is, whether as duties or sins they are like to procure themselves happiness or misery from the hands at the Almighty.

Hence, God creates man and man is in effect (God's property). Locke at this point seems to state all the elements necessary for a correct concept of right. First, there is a law universally promulgated by either reason or revelation. Secondly, he speaks of duty and obligation.

At the beginning of his *Second Treatise on Civil Government*, Locke makes two statements; equality of men in the state of nature and the law of reason which teaches a conclusion of equality. Firstly, Locke (1960) says that the state of nature is;

A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more another, there being, nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of Nature and the use of the same faculties, should also be equal one amongst another, without subordination or subjection.

And secondly, about reason Locke (1960: 170) says: - "The state of Nature has a law of Nature to govern it, which obliges everyone and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions..." The first of the above statements shows the equality of man from the fact of equality of nature. The second statement shows that all

men are equal, a fact taught by reason, the law of nature. This equality would extend to whatever rights men might have. Locke argues to natural rights from the fact that men are all creatures of one God. Locke (1960: 287-288) affirms: -

... for men being all the workmanship of one omnipotent and infinitely wise Maker; all the servants of one sovereign Master, sent into the world by His order and about His business; they are His property whose workmanship they are, made to last during His, not another's pleasure.

Thus, if God puts man in this world with a specific task to perform, man has the obligation to do all in his power to accomplish this task. Along With the obligation, man must have all necessary rights, as the duties are natural duties. And these would be natural rights. Locke does not employ the idea of God as a means of proving his moral rules, but derives his conclusions from reason as the most reliable norm.

Locke argues that the chief end set for man by his creator as a specie and as an individual is survival. If survival is the chief end, then there remains the question as to the means necessary to that end. Locke posits that these means are life, liberty, health and property. These rights are inalienable and inviolable for they are derived from the Law of Nature which is God's reason. Everyone is bound by reason not only to preserve oneself but to preserve all mankind in so far as his own preservation does not come in conflict with it.

The natural right with which Locke was most preoccupied was the right to property. The core of his argument on property is that property is a natural right and that it is derived from labour. Locke refutes Filmer's claim that property, like political

authority, deriving from God's grant to Adam described in Genesis, had either been a grant to Adam as private property, or a communal grant to all mankind. For Filmer, Indefeasible private property rights were impossible either way, since in the former case, dominion had descended from Adam to the various monarchs of the world, or subjects thus held private property only at the pleasure of the king.

Reacting against Filmer's claims, Locke submits that through God's grants to Adam and Noah, he gave men the world in common, and he derives the subsequent right to private property, like the right to limit political power, from our duty of self-preservation. Locke notes that people come to have a right to private property in the state of nature: "Men, once being born, have a right, to their preservation, and consequently to meal and drink, and such other things, as nature affords for their subsistence." (Locke, 1960: Section 27, 307)

According to Locke, the world initially belongs to everyone in common, but every individual is entitled to take some of the common property and make it their own. This is justified by appeal to natural law, which Locke believes knowable by reason, and scripture: - "God, who has given the world to men in common, has also given them reason to make use of it to the best advantage of life and convenience" (Locke, 1960: Section 31, 308).

Locke justifies the right to property by postulating that since man owns his own person, his body and limbs; the object with which he mixes his labour becomes his own property by right. He declares that owners may do whatever they want with their property as long as they do not invade the rights of others. Human beings are primarily centres of rights and duty that require, first and foremost, their survival. What we take and eat from nature in

order to survive becomes our property bearing in mind that God had given the earth to men for their subsistence.

Hence, individuals for Locke are not only bodies but possessors of rights. He states that gathering something natural and unowned for our sustenance involves us imposing our rightful, survival-oriented purposes on it. So by extension, any such ‘mixing our labour’ with the products of nature makes them ours and establishes a prima facie right to private property.

### **Repositioning Locke’s philosophy of natural rights**

In presenting his philosophy of natural rights, Locke does not consider the natural condition of man as a member of a living community. In the ‘state of nature’, man is essentially assumed to be isolated. This focus on the isolated individual means that the primary interest for Locke is in respect to individual’s rights. The principal reason for forming communities, according to Locke, is for the preservation of the right to own property (McPherson, 1962). This is quite far removed from the Aristotelian tradition of Natural Law espoused by Aquinas, which provides that man’s natural condition was as part of a community (Sabine & Thoson, 1973). Therefore, Locke represents a relatively sharp change in the development of Natural Law.

Locke feels that his philosophy of natural rights leaves individual with free society but forgetting that leaving men with absolute rights is to corrupt human nature because these rights will be misinterpreted, misused and abused. Moreover, establishing the proposition that natural rights emanate from nature (God) is a direct way of putting the individual in an endless chain since that, if actually that God is behind these natural rights then, individuals only have the privilege not the power to use these rights. God in turn must have given these

individuals certain conditions on how, when and where to use these rights. Individuals therefore, are only custodians of these rights not actual owners. Thus, since God is the source of these rights according to Locke, individuals are to act according to the divine commands. Further, if actually individuals have absolute control over one's property especially the body, Locke would have had no objection to same-sex marriage since he acknowledges that the chief end of marriage is procreation, which is impossible for same-sex spouses.

Locke's theory of natural rights is too egalitarian and subversive. It is not founded on individualism but on natural law as designed by God. This framework, in turn, stresses on duties not rights. Thus, human beings within a society had evidently contracted away their natural rights. There were virtually no limits on such a contract, hence human beings have no absolute or total exercise of natural rights. Human rights are therefore mitigated by the civil society. Suppose it is accepted that rights are created by the law as Locke claims, and the law is nothing but an order (command) of the sovereign. Law and rights, therefore, need government in order to exist. Obviously without the government, law and rights are futile. So, the notion that there are or there could be rights not premised on sovereign command and which exist prior to the institution of government is vigorously challenged and repudiated. Locke is an apologist of capitalism, legitimizing the unlimited accumulation of capital.

### **Lockean natural rights and Nigeria experience**

The important invention of Locke's philosophy of natural rights to humanity is the establishment and development of Universal Declaration of human rights which have become almost universally accepted among lawyers, law students, and the

general public as the indisputable basis from which all profound thinking about rights must start. Locke's philosophy of natural rights has created numerous boisterous impacts in the society. It has played vital role in the development for modern idea of human dignity through social contract between the ruler and his subjects. Good Government then becomes legitimate when it systematically honours and protects the rights of its citizens while citizens on their part, are obliged to give allegiance only to the government that protects their rights.

Generally, Locke's notion of natural rights in our contemporary period represents democratic system of government. In political philosophy, democracy is a theory according to which the good of the state consist in the well-being and free initiative of the component members. This however, connotes freedom of thought and decision which spin around liberalism. Locke's assertion of natural rights furnishes humanity with the knowledge of certain 'principles of society' that must be respected if persons are to pursue happiness, peace, and prosperity while living in society with others. This is evident in our country Nigeria.

In Nigeria, there are stipulated rules and regulations embodied in a written document called 'constitution' where individual rights are established. This constitution does not leave individuals with absolute rights as Locke opts for rather, individuals are either rewarded or punished in accordance with the constitution. The constitution gives the government absolute charge over the lives and property of every Nigerian. Though every Nigerian is entitled to his basic rights to freedom of whatsoever, no Nigerian is superior to the constitution rather; individual's daily life reflects the promulgation of the constitution.

## **Conclusion**

Locke is chiefly known on his insistence that individual did not transfer completely all his natural rights to the civil society and that government should exist to serve the public good since she (government) gets her recognition through the populace. To Locke, people form societies through consent, and societies establish governments in order to assure the enjoyment of these inalienable rights. Though as regards right to property, Locke maintains that individuals in pursuit of property should respect others and avoid using them as a means, his idea of natural rights should be restructured especially his designation of body as a property. This has caused many commotions in our contemporary society because the society has misinterpreted Locke's doctrine and through it, individuals come to believe that they can exercise full autonomy over their bodies. In conclusion, the transfer of individual rights to the society is the only means to secure property. The state, however, is run by property owners, for property owners.

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