
A Theory Of Natural Law Applied To Kenya

Although there exist various jurists under the natural law umbrella, the focus shifts to Thomas Aquinas who is a classical naturalist. Natural Law alias true law is defined as a right reason in agreement with nature which is universal, eternal and unchanging sourcing its validity from the Almighty. This is to say, filtering the many availed principles of nature requires reasoning. In fact, law and morality are said to be integrated. Morality, being what is right or wrong, is derived from nature and guide us in figuring out what the laws are and act in conformity with them at both private and public platforms. The rationale is to keep check and balance in communities in avoidance of the never-ending chaos as a result of being infected with impunities.

Arguably, the supreme law of Kenya has partially absorbed natural law jurisprudence. Kicking off with the preamble, it acknowledges the supremacy of the Almighty God of all creation and it is proud of its subjects' ethnic, cultural and religious diversity. At the very end it signs off with 'God bless Kenya'. This without doubt brings out natural law. Article 32 exhibits the freedom of conscience, religion, belief and opinion as a right that every person is entitled to and should not be force to act or engage in anything that is contrary to the person's belief or religion. No wonder it granted the existence of Kadhi's courts. Eternal and divine law is one of the forms of natural law which can be sourced from holly books availed to humans. Article 11 (1) also touches on culture expressing it as the foundation of the nation and the cumulative civilization of the Kenyan people and nation. Basically, the constitution does not turn a blind eye on cultural beliefs as its wording cannot be used to single out a specific group of persons, resulting to endless conflicts, as highlighted in article 8. With regards to Aquinas' thoughts on natural law, people are able to use their reasoning in order to come up with their own choices leaning towards the principle of what law ought to be. This happens mostly in cases where the book laws tend to be silent with regards to a conflicting matter thus giving room to make assumptions in resolving the matter.

In short, the above said rights are limited in nature as seen in article 24 but precisely in article 2 (4) stipulating that any law inclusive of customary law is said to be null/ void if it is inconsistent with the Constitution. However, there exist some rights, such as freedom from inhumane activities, as stipulated in article 25 which are termed as prerogative rights. The same principle is seen in natural law where any man-made law that contradicts the law of reasoning is said to be void. Nevertheless, the promulgators of the supreme law are beings who were governed by their own reasoning and it is not wrong to say that morality is the foundation of the constitution which tends to differ depending on a person's beliefs. All in all, marital unions are part of nature formed by persons with the sole purpose of building a home that is considered to be an integral part of the society. A home is supposed at all time to be a safe haven for its residents. And this can be fully achieved when there exists zero tolerance of inequality between the couple eradicating the possibility of either physical, psychological or emotional abuse from happening. The Constitution advocates that parties to a marriage are entitle to equal rights throughout their union; every person is equal before the law and has the right to equal protection and equal benefit of the law; And, every person has the inherent dignity and the right to have it respected and protected. Rape occurs due to the existence of inequality between the spouses resulting to one partner dominating the other. The said articles tend to draw a clear picture that leaves no room for one to use the law as its shield in the commission marital rape. [The bible is not

speechless when it comes to matters of rape. In fact, it condemns rape as an act that encourages patriarchy. One is right to say that Christianity tends to punish the rapists. Furthermore, passages such as Ephesians 5, Mark 10:43-45, John 15:1-17 and others emphasize that there should always be a mutual submission due to love and respect which is more like that of Jesus and church that had no traces of selfishness and violence.

Islam shouts against rape, being a forbidden act, it is punishable by death. It is showcased as a capital punishment whose aim is to cause harm to its victims. Contrary to most beliefs, it is only the culprits that attract the death penalty and not its victims. It too condones marital rape stating that force should never be exercised comparing this barbaric act to that of an animal.

Evidently, Hindu too criticizes rape terming it as a form of humiliation and subjugation of its victims. It advocates that its perpetrators be punished as rape is a crime no matter who its victim is or where it took place. Rules for Sexual Activity, Vishu Purana 3. 11, both parties should be free from imperfections, unwillingness being one of it, meaning that Hinduism does not accommodate marital rape. Marital rape is associated with force which is a hinderance to a happy life that is contrary to what naturalists advocated for. For pleasure to be attained during sex then the parties involved need to have consented to the act in the first place. Otherwise it shall all be about satisfying one's desire while suppressing another's bringing about the inferiority aspect in a relationship.

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