A PHILOSOPHY OF HUMAN RIGHTS LAW IN NIGERIA: FOCUS ON INTERSUBJECTIVITY AND JURAL RELATIONS[1]

Abstract

This study uses the philosophic to examine the intersubjectivity and the relational posture of human rights praxis in Nigeria as provided in the extant constitution. It finds out that a right, for instance, involves a system of relations in which there are three terms and a basis or foundation on which the relations are grounded. Accordingly, there are identified four basic components of a right, namely, subject, term, matter, and title. It is discovered that the subject of a right can only be a person because he is obliged to guard the moral value of his being, fulfill himself by voluntary observance of the law, and thus reach his last end. The term of a right must also be a person that is obliged to respect or fulfill the rights of another. However, it is revealed that the matter of a right can never be another person 'since in the exercise of any right the subject always subordinates the matter to himself or herself and uses it as a means to his or her own end'. Hence, a person cannot be subordinated to the interest of another to be used and consumed as a mere means for another's benefit. The title of a right refers to the reason for which a particular concrete right exists, and establishes a connection between the subject and the matter of a right. The result of this study is that the harmony of the jural relations is often not realized in Nigeria today, giving rise to mal-development, in spite of constitutional demands. A reorientation is therefore advocated.

Key words: *Human Rights, the Philosophic, Jural Relations, Intersubjectivity, Nigeria*

1. Introduction

The subject of human rights is of concern to sundry disciplines such as sociology, political science, law, history, education, religion, theology, psychology, and so on. Yet the nature of jurisprudence or legal philosophy as 'science of legal issues by their ultimate causes' (*'scientia legum rerum per ultimas causas'*) disposes it for a more dispassionate and foundational study of human rights, with a view to relating it to the realization of human dignity and achievement of man's destiny. If for no other thing, philosophy 'seeks to elucidate any concept or analyse any activity whatsoever' in which enterprise 'philosophers aim at exposing the presumptions and beliefs of society, dragging them to light.'[2] Thus, this study critically discusses a specified fundamental feature of human right, namely, its interpersonal connections, in the light of the structural-functional role the respect and protection of human right should play in Nigerian society. In particular, the study hermeneutically and analytically considers the intersubjective and relational character of human right praxis in Nigeria and relates the fruits thereof to the relevant provisions in the 1999 Constitution of the Federal Republic of Nigeria.

2. The Philosophic

It may be useful to start a reflection on a philosophical subject with what one means by the term 'philosophic'[3]. Yet, the definition of 'philosophic' is itself a problem in philosophy. This

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[2] B.E.Nwigwe, 'The Philosophy and the Society' in J.O. Oguejiofor and G.I. Onah, *African Philosophy and the Hermeneutics of Culture: Essays in Honour of Theophilus Okere* (Munster: LIT VERLAG, 2005), p. 3.

[3] Only a few scholars on the subject would notice, or rather, readily admit any semantic difference, between 'philosophic foundations' and 'philosophical foundations', which difference might be considered fundamental by a professional philosopher. This is trite as both usages have been undauntedly employed amongst authors, 'authorities', legal theorists, political scientists, partisan politicians, theologians, human rights activists, journalist, and even freelance newspaper columnists. However, the researcher overlooks the import of the distinction between 'philosophical' and 'philosophic' as they vary in the presentations of theorists and the general thinker on

is due to the fact that the meaning of the term had hardly been a product of a consensus even among philosophers. The fact of these diversities of opinions has, for instance, given rise to different definitions and schools of thought. Thus, the term 'philosophic' or even 'philosophy' has been used in several senses. In broad perspective, it has been used to refer to a 'way of life'. According to this usage, one can talk about 'one's philosophy of life' or one's guiding principles of life. It is also not uncommon to observe that the term 'philosophic' is sometimes employed in relation to a worldview or even religion. One can in this guise talk of Buddhism or Islam as philosophies, or identify African traditions as constituting African philosophy, as does Mbiti[4], for instance. Strictly speaking, however, Umeogu regards 'philosophic' as 'of or according to philosophy.'[5] Its etymology, *philia* (love), *sophia* (wisdom) states philosophy as *love of wisdom.* Odimegwu observes that 'while *sophia* is the object of the search, *philia* presents the attitude or method of the search'.[6] Odimegwu concludes thus:

> Philosophy is…a 'love search for wisdom'. It is aptly nominated not a 'logos'—a word, study or then science as such with its definiteness, mechanical preciseness and inflexible explicitness. Philosophy is rather a 'philia', an appreciation, a yearning for, characterized by freedom, dialogue, fluidity, encounter, presence, uniqueness of company and continuous freshness of being and relations.[7]

Hence, unlike *'logos'* disciplines such as psychology, physiology, sociology, anthropology, biology, geology, archeology, or pharmacology, which respectively studies a particular relevant subject matter, the *'sophia'* in 'philosophy' which is the object of the search, 'influences the attitude of the search thereby producing a pursuit that is not just mechanistically rational nor unguardedly emotional but a blend and focal point of these aspects of the being of the human person'.[8] This is perhaps why for Chatalian, philosophy essentially, is about 'the search for the guide of life.'[9] It provides theoretical framework for perceiving, feeling and transforming reality, whether social, political, moral, religious and so on. Philosophy is often seen as a critical theory challenging prevailing descriptions of ourselves and our situation and offering new descriptions which in the words of Rorty 'may perhaps, engender new discourse, new science, new philosophical research programs and thus new objective truths.'[10] Shestarch also observes the different views on the meaning of philosophy: 'To philosophize…is to come to know oneself. Others say that the special function of philosophy is to deepen our understanding of truth. Still others see the philosopher as a judge, assessing the varieties of human experience and pronouncing on the claim to knowledge'[11].

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the subject. It seems only an insignificant nuance exists between 'philosophical foundations' and 'philosophic foundations' in relation to the conception of human rights. This is so as relevant authors on the subject, in spite of semantic differences in their respective usages, discussed, inadvertently or otherwise, the main issues on the matter.

[4] J.S. Mbiti, *African Religions & Philosophy* (London: Heinemann, 1969).

[5] B. Umeogu, *Systematic Philosophy: An Inquiry into the Roots of Philosophical Consistency of Truth and Error in Philosophy* (Enugu: Victojo Production Services, 2012), p. 11.

[6] I. Odimegwu, *Philosophic Foundations of Politics* (Enugu: Lumos Nigeria Limited, 2008) p.35.

[7] Ibid.

[8] Ibid., p.36.

[9] G. Chatalian, *Philosophy, the World and Man: A Global Conception* (Ile-ife: University of Ife Press, 1983), p.8.

[10] O. Oladipo, 'Philosophy and Culture' in A. Fadahunsi (ed), *Philosophy and Society* (Ibadan: Hope Publications, 1999) pp.19-20.

[11] J. J. Shestack, 'The Philosophic Foundations of Human Rights', *Human Rights Quarterly* 20.2 (1998) 201-234, p.201.

Although the above shades of meaning relate to the concept of philosophy, yet in the main, this study holds with Wiredu that the 'function of philosophy everywhere is to examine the intellectual foundation of life, using the best available models of knowledge and reflection for human well-being.'[12] Socrates would hold that 'unexamined life is not worth living.' This study shares the opinion of Alston and Brandt in explaining the philosophical method:

> …it is unwarranted to confine our thinking about fundamental questions to any particular method or to some particular set of premises….To accept any form of limitation would amount to having already answered certain philosophical questions in one way rather than another.[13]

Therefore, 'philosophic' is to be understood neither as relating to a simple study of worldview for that would be ethnology, nor as mere critical reflection just for its own sake. Rather it has to be understood as relating to a critical reflection on human experience in view of human development. More so, the philosophic in this research does not limit itself to philosophy as a *subject* in which particular popular philosophers must be cited in every discourse. Rather the philosophic extends to philosophy as a *method*. This idea is corroborated by Health for whom 'philosophy is, in some sense, not just a subject, but also a way of studying all subjects'.[14] Hence, any presentation of data or analysis of same in a logical, coherent, consistent, organized and critical manner is considered philosophic for the purpose of this work. This paper, therefore, agrees with Odimegwu that the 'philosophic' lies in the intersection or the merging point of the 'philosophical subject matter using the philosophical method and proceeding in the philosophical attitude'.[15] The concept of the philosophic is above all pragmatic. This is not to suggest that the philosopher is a retailer of practical solutions to sundry human problems. Although very arguable, the basic assumption of this study is that philosophy is nothing unless it contributes to human development. The distinctive activity of philosophy lies in the post-fact-gathering phase. It is the retirement to one's 'armchair' in order to ponder all considerations that seem relevant, decide which of these are to be given most weight, follow cogent reasoning wherever it may lead, and arrive at an answer that seems to do justice to all these relevant considerations.[16]

A study of the role of philosophy reveals that down the ages, philosophy has performed one function or the other in the evolution of ideas and human development. It seems one cannot circumvent philosophy in terms of the kinds of objects or subjects it studies or is concerned with in the way one can define sociology as the study of society or institutions, and zoology as the study of animals. In one way or the other, philosophy is concerned with practically everything. What however is distinctive of philosophy is the kind of questions with which it deals. It is in view of this that, for Alston and Brandt, 'philosophy is an attempt to arrive at reasoned answers to important questions which, by reason of their ultimacy and/or generality, are not treated by any of the more special disciplines'.[17] Yet, the ultimacy of philosophical questions need not be taken for granted. What is the meaning of ultimacy in philosophical

[12]K. Wiredu, *Philosophy and an African Culture* (Cambridge: Cambridge University Press, 1989), p.62.
[13] P. Alston & R.B.Brandt, 'Introduction' in W.P. Alston & R.B.Brandt, *The Problems of Philosophy: Introductory Readings* (Boston: Allyn and Bacon, Inc., 1967), p.7.
[14] A.E. Health, 'Introduction' in H. Hawton, *Philosophy of Pleasure* (London: Watts & Co., 1949), p.x.
[15] I. Odimegwu, *Philosophic Foundations of Politics*, p.71.
[16] Ibid.
[17] W.P. Alston & R.B. Brandt, 'Introduction' in W.P. Alston & R.B. Brandt, *The Problems of Philosophy: Introductory Readings* (Boston: Allyn and Bacon, Inc., 1967), p.1.

questions in a way that other sciences and disciplines cannot pose and attempt to answer? Can the philosophic be brought to bear on human rights question in Nigeria?

3. The Philosophic and Human Rights in Nigeria

It may be germane to inquire about what sort of business philosophy in relation to human rights has. In other words, what is the mission of philosophy in human rights discourse? Another way of phrasing the question is, namely, what has philosophy to do with human rights? Assuming philosophic discussion can be brought to bear on human rights issues generally, what connection has it with human rights provisions in the national constitution? In the introduction to this work, we noted that the question of human rights and human rights in Nigerian constitution can be a subject matter for discussion in many disciplinary areas such as law, sociology, theology, economics, religion, history, psychology, and so on. Yet, the way philosophy approaches or studies the subject is markedly different. For instance, while the sociologist takes it as a given that there are human rights as provided in Nigerian statute books, and goes ahead to study the effect of human rights abuses or enjoyment on the development of Nigerian society, the philosopher on the other hand poses a more fundamental question of the existentiality or otherwise of human rights. Assuming he establishes the existence of human rights, albeit it, conceptually, the philosopher poses another question of why should there be human rights. This concern certainly leads him to attempt the justification of human rights. Again, while all that the lawyer is concerned about human rights is whether or not they are provided for by a written constitution as in Nigeria or by convention as in Britain, and how the rights can procedurally be enforced in courts and which courts, the philosopher is concerned with why should there be certain rights and no other rights, and for what reason are the rights called 'human' and even 'fundamental'. Hence, while the concept of human rights can be used in many a disciplinary area, yet the task of seeking the nature or clarification of the concept is clearly a philosophical one. That is not to say that scholars in other fields of study cannot attempt to inquire into the nature or clarification of the concept of human rights. They can; yet such inquiry cannot be taken to be within the actual province of their field of study. Such an inquiry is no doubt the result of epistemological necessity required in the process of studying the subject in that specialized area coupled with the germ of philosophizing resident in every reasonable human person.

Besides, another feature of some philosophical questions on human rights as a reason why they cannot adequately be treated by the specialized disciplines is their scope and generality. Instances are: Why are rights regarded as human? What distinguishes man from other beings as to exclusively preserve him for rights? Are human rights attached or essential to human beings of all nations from birth for which they can be described as inalienable and universal? These questions have great generality and scope, and necessarily fall outside the territory of any of the particular disciplines. While this observation is so, we do not pretend to think that philosophers make no use of empirical information, in this case, information on human rights as furnished by descriptive disciplines such as law. Any such conception would be quickly dispelled by a glance, say, at the huge development and protection of human rights by international and constitutional law, just as observed by Alston and Brandt, that findings of physiology are appealed to at the philosophical discussion of mind-body problem.[18]

Are there Nigerian philosophers? This later poser is akin to the decades of the Great Debate on whether or not there is African philosophy and African Philosophers as Nigeria is part of

[18] Ibid., pp. 6-7.

Africa. Far from re-opening the debate which is hereby considered unnecessary, it is now trite that there is and can be African philosophy. Hence, granted there can be Nigerian philosophers, were the drafters and framers of the constitution philosophers? If some of them were or at least passed through some philosophy and philosophy-related courses that are relevant to constitution making, how much conscious of philosophy were they in the framing of the human rights content of the constitution? To what extent did they advert to the relevant philosophical theories?

All the above questions, no doubt, touch on yet other questions of the essential meaning of philosophy and its role in human endeavour. Are people called philosophers for the simple reason that they have one degree or the other in philosophy? Is every literary or discursive activity of a degree holder in philosophy philosophy? Can one who does not possess a certificate or degree in philosophy perform any philosophic role even if he is not aware that what he is doing is philosophy? Is there any way of saying that there is at least a germ of philosophy in every reasonable framer of the Nigerian constitution? It appears there is since, for instance, the term 'Doctor of Philosophy', (PhD) is the highest academic degree one gets in most disciplines irrespective of wide differences in methodology. Surely, this demonstrates the fact that philosophy is the foundation of every discipline. Maritain observes that there is an intrinsic philosophy in every discipline.[19] Yet, it is this foundational nature that is the nature of philosophy.

4. Intersubjectivity and Jural Relations: Aspects of Human Rights Philosophy

Intersubjectivity as a term is used primarily in phenomenological sociology to refer to mutual constitution of social relationship. It suggests that people can reach consensus about knowledge or about what they have experienced in their life-world-at least as a working agreement if not a claim to objectivity.[20] Scheff sees intersubjectivity as 'a sharing of subjective states by two or more individuals'.[21] Mirriam Webster sees it as a relationship 'involving or occurring between separate conscious minds'.[22] Scheff identifies three ways in which the term intersubjectivity could be used:

1. In its weakest sense, intersubjectivity refers to an agreement.
2. It refers to 'common sense' shared meanings constructed by people in their interactions with each other and used for an everyday resource to interpret the meaning of elements of social and cultural life.
3. Intersubjectivity refers to shared (or partially shared) divergences of meaning, self-presentation. Intersubjectivity therefore emphasizes that shared cognition and consensus are essential in the shaping of our ideas and relations. Therefore, no individual can be viewed as partaking in a private world, a world which its meaning and definitions can be viewed apart from other subjects. Different fields of study have their different conceptions of intersubjectivity. Thomas Scheff discussing intersubjectivity in psychoanalysis writes, Intersubjectivity is an important concept in the modern school of psychoanalysis where it has found application to the theory of the interrelations between analyst and 9analysand. Adopting intersubjective perspective in psychoanalysis means to

[19] J. Maritain, *An Introduction to Philosophy*, trans. E.I. Watkin, (London & New York: Sheed and Ward, 1965), p.84.
[20] T. Scheff, et al, *Goffman Unbound: A New Paradigm for Social Science* Http://en.wikipedia.org/wiki/intersubjectivity (7-12-2010).
[21] Ibid.
[22] http://www.marian-webstercom/dictionary/intersubjectivity. (13/05/12).

give what Robert Stolorow and George Atwood define as 'the myth of isolated mind'. In Stolorow's intersubjective system theory, intersubjectivity refers not to the sharing of subjective states but to the constitution of psychological system or fields in the interplay of differently organized experiential worlds. Here, emotional experience always takes form within such intersubjective system. Around the late 1980s, psychoanalytic movements have been often referred to as relational psychoanalysis or relational theory. Daniel Stern is a central figure in the development of this theory. Intersubjective school in psychoanalysis is however inspired by research on nonverbal communication of infants, young children and their parents. Scholars indeed stressed the importance of real relationships between two equivalent partners.

Intersubjectivity in phenomenology does many functions. It allows empathy. Empathy in phenomenology involves experiencing another person as a subject rather than as an object among objects. By so doing, one sees oneself as perceived by 'the other' and the world in general as a shared world instead of one only available to oneself. Edmund Husserl as a phenomenologist carried out early studies on intersubjectivity. Edith Stein his student extended the concept and its basis in empathy in her work, 'On the Problem of Empathy' (Zum Problem der Einfuhlung), her doctoral dissertation in 1917. More still, in phenomenology, intersubjectivity offers help in composition of objectivity. This is in the sense that the world is experienced not as available only to oneself, but also to others. Here, there is a bridge between the personal and the shared, the self and the other, the 'I' and the 'other'. The other is seen as a subject, hence intersubjectivity of Gabriel Marcel. From the anthropological viewpoint, intersubjectivity was not left alone. It was studied in the anthropology of interpersonal relationship as an attempt to bring together the disparate ways of understanding behaviour of humans as creatures of their own values. Intersubjectivity therefore from anthropological purview is the study of how two individual subjects whose experiences and interpretations of the world are radically different understand and relate to each other. Indeed, recently, anthropology has started shifting towards studies of intersubjectivity and other existential phenomenological themes.

Philosophically, intersubjectivity is seen as the 'co-creation of relationship builds on fact that at the kernel of the relation is the self-consciousness of the respective partner'[23]. Frie retorts that most theorists of intersubjectivity fail to appreciate the importance of individual self-consciousness. A differentiated consciousness is indeed a prerequisite for the awareness of inner othernesses and 'outer otherness[24].This realization will allow for a co-creative 'other' that encompasses the relationship. Winnicott sees it as 'an intermediate playground where the subjectivity merges with the objective reality'.[25] In this periscope, instead of defining itself in relation to the inner and outer otherness, the ego swells out beyond its boarder in an attempt to engulf the other party. Kierkegaard affirms human character as a being with others when he writes that '...every man should be charged about having something to do with 'the other'[26]. For Heidegger, man is the only being in the world that has a relationship to himself and to others. Like Heidegger, Edmund Husserl conceives relationality as the basis of authentic existence. In the same

[23] Scheff,.

[24] R. Frie, 'Subjectivity Revisited: Sartre, Locan and Early German Romanticism', *A Journal of Phenomenological Psychology* 30:1-3 htpp:// Swipnetse/ w7384/intersubj.htm (4-1-2011).

[25] D. Winnicott, *Playing and Reality*. http://home~ W~73748'intersubj.htm. (13/05/14).

[26] W. Kaufmann, *Existentialism from Dostoevsky to Satre* (New York: Meridian Book, 1957), p.92

vein, Karl Jaspers conceives relationship in terms of Being-for-itself and Being-for-others as Martin Buber talks of I-Thou relationship. These existentialist philosophers of interpersonal relationship in one way or the other influenced Gabriel Marcel's philosophy and his conception of intersubjectivity in terms of interpersonal relationship whereby man perceives another as a subject or human relationship in terms of subject-subject relationship.

In relation to human rights, intersubjectivist philosophy is made practical in Hohfeld's analysis of jural relations. Hohfeld isolated basic legal concepts and expressed them in specific terms. Hohfeld's work seems to be of great help in order to avoid the ambiguities which can easily creep in by an indiscriminate use of the term 'right'[27] for the four kindred concepts of claim-right, power, privilege, and immunity. In fact, he observes that the very common use of the term 'right' to cover the four different species which he identified was a 'loose',[28] 'nebulous'[29] and 'unfortunate'[30] usage. He would much have preferred to reserve the term right for what he denominated claim-right.[31]

However, many authors have pointed out that the four types of rights that Hohfeld[32] identified share some common traits that justify the application to all of them of the generic term 'right'. It has often been pointed out that all of them represent *advantages or benefits* conferred on a person by the law (in the case of legal rights) or conceived to be necessary to him for the full development of his personality and due to him by other people or the community (in the case of moral or human rights). Thus, for instance, MacCormick has described this view as contending that 'what is essential to the constitution of a right is the legal (or moral) protection or promotion of one person's interests as against some other person or the world at large, by the imposition on the latter of duties, disabilities, or liabilities in respect of the party favoured',[33] In other words, according to this conception, two things are implied when it is stated that I have a right: (a) that somebody else has a duty, disability or liability in respect of me; and (b) that the reason for the existence of that duty, disability or liability is precisely the protection or promotion of my interests.[34]

However, that may be, in Hohfeld's analysis, a *claim-right* is an enforceable claim to performance either through action or forbearance by another. *Privilege* or *liberty* is the legal relation between one person and another (A & B) when that person (A) is free or at liberty to conduct himself in a certain manner as he pleases and his conduct is not regulated for the benefit of that other person (B) by the command of the society and he is not threatened with any penalty

[27] Hohfeld's scheme is undoubtedly very useful in order to avoid ambiguities in statements about rights, but it should not be taken to be beyond criticism. Its main shortcoming is that in some respects it does not reflect the way in which moralists, lawyers and ordinary people use the term 'right'. Some instances of this problem will be alluded to below.

[28] W.N. Hohfeld, *Fundamental Legal Conceptions* (Yale: Yale University Press, 1919) pp. 42, 51. Cited in H.L.A. Hart, 'Bentham on Legal Rights' in A. W,B, Simpson, ed. *Oxford Essays in Jurisprudence (Second Series)* (Oxford: Oxford Univ. Press, 1973), p. 173.

[29] Ibid. p. 54.

[30] Ibid. p. 51.

[31] Ibid.

[32] Some extremely useful methodological clarifications on the use of Hohfeld's scheme can be found in J. Finnis,'Some Professorial Fallacies About Rights', *(\972)4 Adelaide Law Review* 337.

[33] D.N. MacCormick, 'Rights in Legislation' in P.M.S. Hacker and J. Raz (eds.), *Law, Morality and Society* (Oxford: Oxford Univ. Press, 1977), pp. 189 &192.

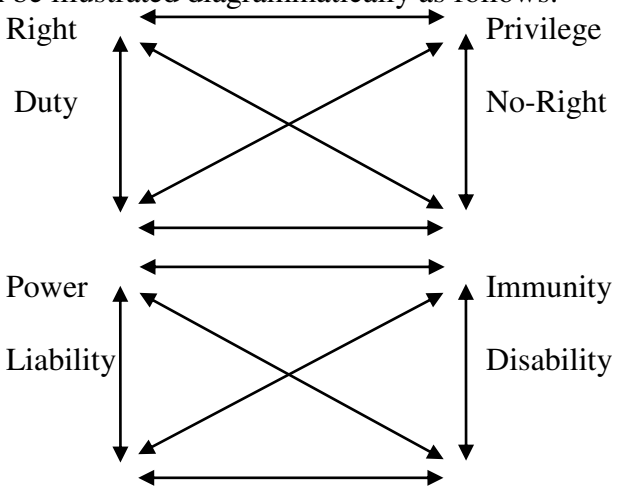
[34] The need for condition (b) may be better understood by considering an example. The State has a duty to serve the common good; in a given set of circumstances the best way to do this may be to give subsidies to a company; if this is the case the State has a duty to do this. But we should not say that the company has a *right* to the subsidy.

for disobedience. *Power*, on the other hand, is the ability of one person (A) either to alter the legal relations between him and another (B) or between that other person (B) and a third party (C). It is the ability conferred upon a person by law to determine, by his own will directed to that end, the rights, duties, liabilities or other legal relations, either of himself or of other persons. *Immunity* is the relations between one person and another (A&B) when that other person (B) has no legal power to affect one or more of the existing legal relations of the person (A). It is a right in relation to the legal power of some other persons.

Hohfeld's analysis of jural relations was based on the arrangement of concepts in pairs of correlative, opposites and contradictories.[35] Hohfeld identified four categories of rights with jural correlatives, jural opposites and jural contradictories. The categories of rights are claim-right, liberty or privilege, power and immunity. Hohfeld's arrangement is represented thus:

Correlatives:	(i)	Right	-	Duty
	(ii)	Privilege/Liberty	-	No-Right
	(iii)	Power	-	Liability
	(iv)	Immunity -	-	Disability
Opposites:	(i)	Right -	-	No-Right
	(ii)	Privilege/Liberty	-	Duty
	(iii)	Power -	-	Disability
	(iv)	Immunity	-	Liability
Contradictories:	(i)	Right -	-	Privilege
	(ii)	Duty -	-	No-Right
	(iii)	Power -	-	Immunity
	(iv)	Liability	-	Disability

The jural relations can be illustrated diagrammatically as follows:



Here, the jural correlatives are connected by vertical arrows, the jural opposites connected by diagonal arrows, and the jural contradictories connected by horizontal arrows.

In relation to human rights in the Nigerian constitution, a proper analysis and contextualization of what is represented in the diagramme is congenial. The jural correlatives shown by vertical arrows mean that the presence of one in person (A) implies the presence of the correlative in

[35] W.N. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning,* Chapter 1.

another person (B). For example, the presence of a privilege in one person (A) implies the presence of a right in one person, (A) implies the presence of a duty in another, (B). Jural correlatives involve a relation between two persons. There is an intersubjectivity of relations. For instance, if A has a right to any of the claim-rights in sections 33 to 44 of the 1999 Nigerian constitution, then B has a correlative duty to respect the relevant right of A. Again, if one begins with the fact that B has a duty, then it means that there is a corresponding right of A, for instance, for which B has a duty to respect. This relation of course can be replicated with the other items in (ii), (iii) and (iv) vice versa their corresponding correlatives. Hence, if A, a lawyer has a privilege, as he does, not to disclose confidential communications between him and his client, then B, a police officer or whoever, has no-right to extract the information as to the confidences from the lawyer, A. That means that under the Nigerian law, the relevant lawyer cannot be charged with the offence of compounding a felony, if a felony is in issue, which the position would be different if any other persons' conversations are involved, say those of a non-lawyer and any person, a lawyer and non-client, and so on. Similarly, if A enjoys a power, then B is liable to the power enjoyed by A in relation to A and B, or even that the relation between B and C is liable in relation to the power of A. This is because power is the ability of one person (A) either to alter the legal relations between him and another (B) or between that other person (B) and a third party (C). Powers are replete in the constitution such as powers of the National Assembly or of a State House of Assembly to make laws, oversee the implementation of laws, investigation, control public funds and so on; powers of the court to interpret laws; powers of the President or a State Governor to, respectively, appoint or dismiss, judicial officers, ministers or commissioners, directors, and so on. Hence, since the A, the Governor has the power to appoint B, a commissioner, then that commissioner is liable to the power of the governor who can remove him at any time without obligation to give reasons. By exercising this power, the Governor has altered the relation between himself and the commissioner. Same Governor can also exercise the power to remove or redeploy the permanent secretary working under the commissioner thereby altering the relations between B, the commissioner and C, the permanent secretary. It has to be noted, however, that A has no obligation to exercise a power as he cannot be compelled to so do. The situation would be different if A has a duty and not power, since A can be compelled to perform a duty, say by order of mandamus. On the other hand, once any person, say B, has any liability whatsoever, then another person, say A, has a correlative power. More still, in Nigeria, the executive immunity enjoyed by A, who can be and can only be the President, Vice President, Governor and Deputy Governor while in office, as enshrined in section 308 of the Constitution, entails that no person, say B or whoever, can arrest, imprison, compel the appearance of or institute a civil or criminal proceeding against A. Therefore, B, a police officer, a law enforcement agent, judicial officer or any other person is completely disabled to perform any of the above acts.

Another set of relations is the jural opposites which are connected by diagonal arrows. They show that the presence of a right, for instance, in a person, A, implies the absence of its opposite (no-right) in that same person, A. Also, the presence of a duty in a person, A, implies the absence of a privilege or liberty in that same person, A. Again, the presence of immunity in one person, A means the absence of liability in that same person, A. Lastly, the presence of power in one person, A implies the absence of disability in that same person, A. It is understood that in jural opposites, there is no relation except the relation with oneself. However, the other is expected to observe the mutual interplay of the opposites in the relevant person. For instance, if it is true that A has a right, then the implication is that A has no no-right, that is, the whole world should take note that A cannot at the same time be said to possess no-right. That would be contrary, for either A has a right or A has no-right. Again, if A has a privilege or liberty to enjoy an official accommodation and a car, then A has no duty at all to enjoy or even not to

enjoy the privilege. Furthermore, once A has a power to appoint a Judge, then it cannot be the case that A is disabled to make such appointments. In the same vein, as A, the president of the Federal Republic of Nigeria enjoys executive immunity from arrest, for instance, then A is not liable howsoever to be arrested. A cannot at the same time be said to enjoy immunity from arrest and still be arrested.

Yet another group of relations are called jural contradictories. They are designated by the horizontal arrows and are interpreted to mean that the presence of an advantage or disadvantage, as the case may be, in one person entails the absence of its contradictory in another person. Here, just like in jural correlations, there is contemplated an intersubjective relation. Therefore, the presence of a right in a person, A implies the absence of a privilege in another person, B. This entails that if A has a right to fair hearing, for instance, then B cannot at the same time be clothed with or claim any privilege that will interfere with the fair hearing right of A. Similarly, the presence of a duty in A means the absence of no-right in another, B. The implication is that once A, say Police Officer has a duty to protect the lives and property of B, say the citizen, then there is no gainsaying that B has *no no-right* to the duty of A. No no-right (negative-negative) of course translates to right (positive). Hence, B has a right to the duty of A, the police officer, to ensure the security of his (B's) life and property. In the same manner, the provision of judicial immunity in a Judge, A, in the exercise of his judicial function or legislative immunity in a legislator, A, while engaging in parliamentary debates or arguments means the lack of legal power in any person, B, to undo or at least over A. Finally, the presence of liability in one person, A, implies the absence of disability in another person, B. An example is that if A, an accused or a convict, is liable to be prosecuted or punished in relation to an offence, then the implication is that B, the Police Officer or the Judge, as the case may be, has no disability to perform a relevant act. No disability means ability; so B, the Police Officer or the Judge has ability to respectively prosecute or punish A, the accused or the convict.

There is no doubt that Hohfeld's analysis has generated a lot of controversy in jurisprudence. While some have eulogized his efforts aimed at analyzing the various jural relationships involving the concepts of rights and consequently took deep-rooted interest in his postulations and made them the bedrock of their own theorizing,[36] others have criticized the scheme as not adding any value to jurisprudence.[37] As argued by Dias, although the hopes that were once entertained of startling achievements with the aid of the scheme have not been realized, yet its value and utility as an aid to clear thinking have been proved.[38] The positive features of the Hohfeld's scheme are discernible. It aids the understanding of the concept of rights by comparing same with similar concepts and exposes the distinctions among them. The scheme also draws attention to the legal circumstances which may flow from the existence or non-existence of rights, duties, liabilities, disabilities, immunities, etc.[39] A number of notable

[36] Hart, for example relied heavily on the Hohfeldian analysis of power and duties to formulate his concept of law. See further, Dias, p. 64.

[37] Pound on his own part contended that Hohfeld's analysis lacked juridical significance. See Pound, 'Legal Rights', (1916) 26 *International Journal of Ethics*, 92 at p. 97.

[38] Dias, p. 63.

[39] Other contributions of Hohfeld's analysis are as follows: The analysis constitutes a useful aid in evaluating the basis of some important legal relations, that is, jural relations at rest and changing jural relations. The analysis also throws light on the interrelationships of certain legal circumstances and the implications in legal theory. The analysis emphasizes the centrality of the concept of powers as the determinant of other jural relationships. In the analysis, the two key concepts are power and duty. Other concepts are derivatives. The analysis provides the basis for an appraisal of individual decisions in given situations. The analysis may furnish reasons when a decision is incorrect or wrongly decided to make it subject to being overruled by an appeal court. In other words, it may provide the basis for appraising an aberrant decision. The analysis is of value in understanding the law and assist

criticisms against the analysis have reared their heads. Hohfeld mistakenly conceives of right as a relation between two parties only, ignoring the interplay of rights in multi-party relations such as trust agreements. Hohfeld was also criticized for conceiving of all rights as forming the basis of relationships between natural persons alone. In exceptional cases, enforceable rights are preserved by law for entities or subjects who are persons only by legal fiction. For example, an unborn child is generally not regarded as a person in law, but that same child is capable of suing for a tort committed against him in the process of being born[40] or against his mother, but which affected him during pregnancy.[41] Again, in Nigerian Constitution, the exercise of power by one arm of the government is often checked by other arms. For instance, by virtue of sections 147 (2) and 192 (2), executive powers of appointments of ministers and commissioners must, for validity, be confirmed by the Senate and the State's House of Assembly respectively. Again, the approval by the Senate,[42] of the presidential appointments, upon the recommendation of National Judicial Council, of the Chief Justice of Nigeria, the Justices of the Supreme Court, the President of the Court of Appeal, the Chief Judge of the Federal High Court, the Chief Judge of the High Court of the Federal Capital Territory, the Grand Khadi of the Sharia Court of Appeal of the Federal Capital Territory, and the President of the Customary Court of Appeal of the Federal Capital Territory, is quite illustrative of this legislative check on the executive power of appointments. In relation to the States, there is a corresponding check on the Governor's appointments of the Chief Judge of the State High Court, the Grand Khadi of the Sharia Court of Appeal of the State, and of the President of the Customary Court of Appeal of the State[43] whereby the appointments are subject to the confirmation by the State House of Assembly. Similarly, by virtue of section 12 (1), treaties negotiated by the President on behalf of Nigeria, and other countries cannot have a force of law in Nigeria unless the National Assembly enacts them into a domestic or municipal law. Again, the legislative approval or disapproval of the proclamation of state of emergency by the President under sections 305 (2) and 305 (1) of the Constitution respectively also speaks volume of this executive power limitation.

But it seems it is in the issue of power and control over public funds that the legislature furnishes a rather considerable check on what should have been an executive prerogative. By virtue of sections 80 (2), (3) & (4) of the Constitution, no withdrawal of moneys, even if with the approval of the President, shall be made from the Consolidated Revenue Fund and other public funds of the Federation unless authorized by an Appropriation and other Acts of the

in distinguishing in the appropriate cases. Lastly, the analysis is said to be an indispensable aid to clear thinking mental training and retraining.

[40] *Pinchin, N.O. v Santam Insurance Co. Ltd.* (1963) 2 SA 254. Also cited by Dias, p. 338.

[41] See also, *Duval v Seguin* (1972) 26 D.L.R. (3d), 418. Other criticisms abound: Hohfeld's conceptions are said to be without juridical significance especially the use of terms such as 'Liberty', 'Liberty' and 'disability' (R. Pound, 'Legal Rights', (1916) 26 *International Journal of Ethics,* 92 at p. 97. The analysis has been criticized as incorrect and incomplete in some fundamental respects. For example, it was advocated that the concept of power needs greater fine-tuning. His claim that the four identified categories of right could not be defined has been proved to be untrue. Not only have the terms been defined, they have been defined with precision. The analysis has also been objected to on the ground that the terminologies employed were unusual and should be earmarked for other conceptions. Thus, people are not accustomed to think or substitute liberties, disabilities, immunities and liabilities for right. Lastly, the utility of the analysis and the practical application to decided cases have been questioned. The argument is that since cases that accord with the scheme are decided without the assistance or aid of the scheme, them the scheme is useless or superfluous.

[42] See sections 231 (1) & (2) 250 (1), 256 (1), 266 (1) of the Constitution.

[43]See section 271 (1), 276 (1) & 281 (1) of the Constitution.

National Assembly.[44] Again, a withdrawal from the contingency fund by the President can only be made by an authority guaranteed by a law made by the National Assembly made pursuant to section 83 (1). The counterparts of this legislative safeguarding of the public funds in the States are all, almost in the same wordings regarding that of the Federation, provided for in sections 120 (2), (3) & (4) and 123 (1) of the Constitution.[45] On the other hand, the law making power of the legislature is curtailed by the constitutional provision for executive assent to bills before they become laws.[46] Therefore, the omnipotent nature of power as conceived by Hohfeld has, otherwise in reality, a limited application. Needless to note with John Stuart Mill that the only purpose for which power can rightly be exercised over any member of a civilized community, against his will, is to prevent harm to others. Similarly, the only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others or impede their efforts to obtain it.[47]

5. Conclusion

The above discourse is just a tip of an icebag of how jurisprudence as philosophy of law can reflect on the question of human rights. There is plethora of ways. Even as the subject of human rights generally has a very remote and chequered history, yet there is the presupposition that the intellectual development of the notion thereof is a clear testimony to the impact of philosophy on public policy and political behaviour. Hence, the evolution of the concept of human rights is traceable down the lane of philosophic thought. Indeed, the basic germs that formulate the notion of human rights, including those elements forming its internal theoretical contradiction, especially in praxis[48], are philosophically built, as it were, into its conceptual theory. This is even historically germane as reflections on the subject advanced via speculations concerning the nature of the universe, and especially, on the point of man's place in it bound up, as it were, with the time-honoured struggle against tyrannical rule and social and cultural intolerance. This is further reflected in philosophy's emphasis on human solidarity, social justice and the amelioration of human suffering. Human rights' shifting meaning, practical elaboration in political institutions and in constitutional law and jurisprudence, as well as the controversies it has elicited over the years, point to its strong connection, for instance, with the philosophical ethics of the rule of law and with the pursuit of human freedom.

[44]See however section 82 which creates an exception by authorizing the President to approve a withdrawal of money from the Consolidated Revenue Fund in default of appropriations by the National Assembly. See section 59 for the mode of exercising Federal legislative power on money bills.

[45]See also the exception in section 122, which provides that the Governor can permit a withdrawal from the Consolidated Revenue Fund of the State in the event of failure of the House of Assembly to enact the Appropriation Law before the beginning of the fiscal year.

[46]Section 58 (3) of the Constitution.

[47] J.S. Mill, *On Liberty.* Cited in Stumpf, pp.782-783.

[48] Brian Orend, a prominent figure in the contemporary theoretical development of the human rights doctrine and its attendant issues, 'confesses' the concept has a Western bias in its theoretical formulation, though not specific about how Western it is, except to file a retinue of 'official instruments' that raised human rights consciousness in history. However, a reviewer of Orend's popular book; *Human Rights: Concept and Context*, Peter Zwiebach, cuttingly criticized the said remark for negligence of non-Western human rights history. At any rate, both positions may be provisionally right. The West fantasizes human rights regardless of its conceptual compliment in non-human rights. Google search, http://www.du.edu/korbel/hrhw/booknotes/2004/zwicbach-2004.html, (10/01/09).