THE RELATIONSHIP BETWEEN PHILOSOPHY, JURISPRUDENCE, AND LAW

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ABSTRACT

This paper examined the relationship between Philosophy, Jurisprudence, and Law. It emanates as a result of the question mostly asked by students. The question is: of what relevance is the subject-matter of jurisprudence to law? The paper, therefore, is an attempt to illuminates the minds of scholars, and an attempt to launch a pragmatic grand attempt in examining the relationship between philosophy and law in the important topic of jurisprudence profoundly referred to as 'the philosophy of law. The paper illuminates the historical connection between philosophy and law through the works of Greek philosophers and established that the wisdom distilled from these philosopher's work forms the breastplate on which jurisprudence flourished to become the wisdom behind the court's decision. As per the scope of the paper, it engaged in a thorough analysis of the rules of legal analysis, mostly philosophical that the court alludes to in arriving at its desirable conclusions. The paper explores the works of great writers and philosophers like Plato, Aristotle, Kant, Hegel, Russell, Wittgenstein. Hart, Dworkin, Huhn, Greg, and other legal theorists. Buttresses the fact that the connection between philosophy and law is inseverable and hence the importance of the study of jurisprudence as a pragmatic stride to establish a permanent nexus between philosophy and law and a never to be separated link between jurisprudence and law. The aim has been to establish the inseparable link between the court adventurism mind, the wisdom inherent in the decisions of the courts using the legendary Lord Denning's pronouncements on the principle of Promissory Estoppel and the Re- Vandervells Will as most timeless in their relevance illuminating testaments. In essence, this paper examined some jurisprudential theories or schools, the views of some prominent Philosophers, the writings of some legal theorists, some rules of logic, and legal reasoning to establish the fact that the nexus between philosophy and law is inseverable. The paper pragmatically examined the practical links between philosophy and law using the

ISSN 2581 3382

judgment of the indomitable Lord Denning to explicate the similarities between the work of the lawyer and philosopher in their academically articulate navigation from formalism through analogy to realism comparing Dennings' mind to the philosophic mind of Rene Descartes within the method of 'Cartesian Doubt'.

Keywords: *Relationship, Philosophy, Jurisprudence, Law.*

INTRODUCTION AND BACKGROUND

The focus of this paper is to ask the question; what rules of legal analysis guide the Courts in arriving at their most desirable decisions in cases brought before it and how did this lead to the development of the court's jurisprudential thinking? While answering this vexed question, we shall consider the philosophical history and the developments that aided the relationship between philosophy and law. Besides, we employed one of the most legitimate means of interpreting judicial decisions, the philosophical compass found in Huhn's works and some other legal analyst, on the techniques of legal reasoning, using them as the bases for the explanation of the decisions of the Courts. We also explored how estoppel has aided the development of the philosophy of law called Jurisprudence and how Lord Denning uses the principle of promissory estoppel to explain the practical relationship between philosophy, law, and jurisprudence using the work of Grey as a leading light. As a prelude, according to Grey[i]

> *For more than a quarter of a century, Lord Denning has been delivering judgments of revolutionary impact in the common law world. At times, his views have prevailed and at other times he has suffered monumental rebuffs at the hands of fellow judges. Often, the quality of his decisions has been questioned and indeed, a quick reading of a random selection of his judgments could give one the impression of inconsistency, haste, and even capriciousness. A careful reading, however, would reveal a "golden thread" and show Lord Denning not*

ISSN 2581 3382

> *only as a thoughtful judge but as the most important practical exponent of a major school of jurisprudence*

The above view expressed by Grey is an introduction to the question of prime importance. The question is; how did philosophy aids the thinking of the courts in arriving at just and equitable decisions and develop the minds of judges in eschewing conservatism, aiding the dynamism of law and the development of jurisprudence? To start with, philosophy is a Greek creation. At a time when the Ancient Greek was struggling to repel a devastating invasion from the East, many questioned continued to agitate the minds of ancient Greek philosophers, their minds haven been developed by the mythology and cosmogonies of the ancient near east. Consequently, they started ruminating about so many questions like; was it really good for the powerful nations to dominate and enslave the weeks? Was that arrangement made by the natural order? Why would the natural order ordain the wickedness of the strong and the oppression of the powerless? Since it twists for worst, is the natural order itself orderly? If yes, why then was there no orderliness in the relationship of men? And who is responsible for the existence of that natural order- the nature or a yet-to-be-identified god? How can we discover the nature of this, first cause? The Greek philosophers conceived the idea of how to answer these and many more questions; whilst some caved in for reason, others looked at it from the purview of sense experience, few resorts to dialogue, and other to scientific and mathematical calculations.

However, of most important in the lines of thinkers are some philosophers before Socrates, Socrates and his pupils, some modern philosophers, and some recent linguistic philosophers. Prominent amongst the pre-socratic philosophers were the so-called Milesian triad, namely; Thales of Miletus, Anaximander, and Anaximenes. Thales of Miletus, acclaimed to be the first philosopher held that all things emanate from a single material substance, which is *water*[ii]. Thales' philosophy was that everything arises from water and everything revolves around it. Thales inspired Anaximander who argued that the *arche* [iii]could not be water, and neither could it be any classical element. He expressed the feeling that it must be something unlimited or infinite and in Greek *Apeiron*. He started by postulating that the world seems to consist of opposite e.g hot and cold. He concluded that a thing could become its opposite, as hot cold and cold again hot. That the underlying principle from which all thing emanates could not be of

ISSN 2581 3382

this nature and therefore, there must be a unifying factor which he called' the underlying unity. That underlying unity must be ageless, unbound, and imperishable, to which everything must return according to necessity[iv]. Anaximenes felt that the source of all things must be '*air*. Anaximenes astronomical thought that the earth was flat like a disc and rode on air like a frisbee. He formed the view that air was the primary substance to holding the universe together and believe that air was infinite and divine. He was the first to use the word '*pneuma*[v]' breath of life. According to him, *Just as our 'soul being air holds us together, so pneuma and air encompass the whole world.* Interestingly, we found in the Old Testament that after the molding of the human body, God breadth the air of life into man and man became a living being. In the Hebrew word, Pneuma is equivalent to the word *Rauch*, meaning spirit. Though Anaximenes did not recognize *Yahweh* as the Creator of the universe and did not conceive of the pneuma as such.

Xenophanes of Colophon, another pre-socratic philosopher came out with the idea that there was only one god in the world as a whole and ridiculed the anthropomorphism of the Greek religion by claiming that cattle would claim their god looked like cattle, horses like horses, lion like lions, just as the Ethiopians claimed that the gods were snub-nosed and black. He challenged the Homeric and Hesiodic mythology that depicts their gods with all the blameworthy and disgraceful tendencies common to man, portraying them to be involved in raging or violent battles.[vi]The Sophist postulated the idea of orderliness in nature and disorderliness in human conduct. Thus, the Sophists arose from the juxtapositions of nature (*physis*) and law (*nomos*[vii]*).* As Burnet[viii] posits the Sophist in the scientific progress of previous centuries which submitted that:

> *The being was radically different from what was experienced by the sense, and if comprehensible at all, was not comprehensible in terms of the order, but the world in which people lived, was one of law and order, albeit of humankind, own making. At the same time, nature was constant, while what was by law differed from one place to another and could be changed.*

ISSN 2581 3382

Plato named Protagoras as the first person to call himself Sophist. In what philosophers referred to as his theory of relativism, Protagoras made the classical remark that*; Man is the measure of all things, of the things that are, that they are, and of the things that are not, they are not.* The implication according to Plato is that all people cannot think the same way. The Sophist posits that nature provides no ethical guidance and that the guidance that law provides is worthless as nature favours those who broke the law[ix]. Protagoras was known as a teacher who addressed the subject-matters connected to virtue and political life. In Plato's Protagoras, he claimed to teach:

i. the proper management of one's affairs,
ii. how best to run one's household,
iii. the management of public affairs, and
iv. how to make the most effective contribution to the affairs of the city by word and actions[x].

Protagoras was acclaimed to have an interest in Othoepeia, that is, the correct use of words. He was acclaimed to interpret a poem of Simonides focusing on[xi]:-

i. the use of words
ii. their literal meaning and
iii. the author's original intent.

Protagoras' teaching and methodology creates a nexus between his philosophical work and the doctrine of interpretation of the statute and how to construct other important documents such as a will. Aristotle claimed that Protagoras worked extensively on classification and the proper usage of grammatical gender, a type of education considered very prominent in the Athenian courts and relevant in the interpretation of laws and written documents. Protagoras through the titles of his book; *Technique of Eristice* was claimed to be a teacher of Rhetoric and Argumentation. He was reputed to have stated that on any fact, there are two arguments[xii].

Most importantly, the stream is the fact that philosophers confronted with the problem of superimposition of the Will of another man to man, domination, enslavement and the anarchy of man to man, nations towards another were compelled to learn from the natural orderliness and by the study of nature, they thought of how to engender orderliness in the world of man. Hence, from the Milesian Triad to Xenophanes, Pythagoras, Heraclitus, the Elastic philosophers exemplified by Parmenides, the pluralist and the atomist, to the sophists,

ISSN 2581 3382

exemplified by Protagoras, the concern of the presocratic philosophers was to take a clue from nature to engender orderliness in the world of man. The step from natural order descends thus:

i. Philosophers used the orderliness in nature as evidence of the law governing nature i.e natural law.
ii. Philosophers realized that this natural order could be discovered by observation, truth, and reason.
iii. The philosophical school held tenaciously that by the power of reason, guided by observation they could grasp the true understanding of the universe governed by the natural order that sprouts the natural law.
iv. Philosophers of the pre-socratic era believed that the world of nature could be governed by man-made-laws, and these believe became the subject of nationalism.
v. Guided by the above and based on the above premises, philosophers concluded that there does not exist any natural rules governing the conduct of human affairs and human behavior yet absurd and so-subject to change
vi. Sequel to this absurdity and lack of orderliness to govern the affairs of a man living in the natural order there is bound to be a law to govern the affairs of man in the society.

Amidst the absurdity and disorderliness, Socrates also emerged. Using the method of dialogue and going from one person to another, he was able to couch out the truth on many subject-matters like the subject what is justice, order, goodness, faith, fate, nature, wickedness, etc. Though Socrates did not author any book, the immortality of his soul was made possible by two of his pupils, Plato and Aristotle whose great advances led to the development of the laws. Despite the Socratic dialogical move to invoke good virtues among men, he became a victim of disorderliness and draconian law of the past that crept into his time. At a time, in Socrates, society, it became a crime to investigate the things above the heavens and beneath or below the earth considered impious. Anaxagoras was charged under this wicked rule but escaped into exile. Protagoras also fled and got his books burnt in Athens. Socrates himself was accused of preaching heresy and corrupting the minds of the youth by inciting them to revolt. Though his friends beckoned on him to escape into exile, he refused. He argued that if while trying to escape, he was arrested and confronted with the Athenian law of wanting to escape from the law, (though bad law indeed and wickedness than law) what example will he lay down for the coming generation. So, Socrates was sentenced to death and requested to administer poison on

ISSN 2581 3382

himself. That marked the end of the philosopher Socrates[xiii]. Cicero has this to say about Socrates and credits him as;

> *The first who brought philosophy down from the heavens placed it in cities, introduced it into families, and obliged it to examine into life and morals, and good and evil.*

The doctrine ascribed to Plato is derived from his books. First, *The Republic*, and second *The law and the Statesman*. Socrates formed the idea that there can never be good law and justice in citizens in the polis except they are ruled by the philosopher-king. Plato uses long-form analogies, usually, allegories to explain his ideas, the most famous of which is the 'Allegory of the cave'. In it, Plato likens most humans to people tied in a cave, who looked only to shadows on the walls and without any conception of the reality in the outside world. Where they were bound they could not see any other things than the casting of shadows. How, he opined that, if some left the cave, they would see the realities of the outside world and the world illuminated by the sun and the ultimate of good and truth. If these travelers, according to Plato returns to the cave, those inside the cave would not be equipped to believe the reports of the happenings and the realities of the outside world. From this, he conceived the idea that the philosopher-kings are wisest while most humans are ignorant. From this, he entered into the metaphysical world that the direct experience of our senses is no more than a shadow world. That a pale reflection of the reality lies outside the physical and beyond the ken of immediate sense experience. For the philosopher-king and a wise man learned in philosophy attain a vision of the perfect realm, which lies beyond the worlds of the sense. Justice according to the platonic conception is represented as a kind of absolute that could only be comprehended by the philosopher and fully realizable in an ideal state ruled by the philosopher kings. Hence, justice, as represented by the law of a particular state, could amount to no more than a pale shadow of real justice.[xiv]

Aristotle, having studied botany and zoology after a spell of about 20years in Plato's academy, however, a pupil of Plato rejected the metaphysical or the idealistic philosophy of his master. Influenced by theology, Aristotle concentrates his attention on developing the realm of knowledge in his scientific exploration based on observations and experience. He compressed his idea to the development observed in human affairs. He observed that justice might reveal

ISSN 2581 3382

itself according to the development noted from the needs of the communities or the natural development common to all mankind, and based on the fundamental ends and or purpose of man as a social and political being or including natural justice[xv].

It should be noted that the ideal justice according to Plato and Aristotle was linked to the small Greek city-states, but not linked to the whole world until later when their postulation became timeless in their relevance. Later, a group of philosophers known as the Stoic stressed the knowledge about the universality of human nature and brotherhood. The essential fundamentals of their teaching are:-

i. The essential characteristic of human nature is the power of reason and hence, there can be universal law applicable to all men and ascertainably by reason.
ii. That law could be classified as the law made by man and to operate within the cities i.e. *polis* and the universal law of the cosmopolitan cities and applicable to all men.

Coinciding with the Stoic's period was the spread of the Roman Empire and the inculcation of the stoic's philosophy of law into the Roman law as the Roman jurists started making a distinction between *jus civile* and *jus gentium. Jus civile* been the law applicable to any transaction between Roman citizens and *jus gentium* applicable to all men within the confines of the Roman Empire. Roman law was brought into the former Angle land later known as English to complement the existing law and crept into the common law world. The philosophical underpinnings or the influence of the philosophy of law or jurisprudence started through great philosophers, continue through great writers and justices like Coke, Ellesmere, Devlin until the 19th Century when judges like Lord Denning made a great advance in the relationship between jurisprudence otherwise known as the philosophy of law and putative law. The influence of Greek philosophers on the law could also be viewed in the usage of Latin maxims. Latis had come to be regarded as a member of the broad family of Italic languages. Its alphabet, the Latin alphabet was said to have emerged from the Italic alphabets which in turn were derived from the Greek and the Phoenician Scripts. Historically, therefore, it was said to have come from the prehistoric language of the Latium region, specifically around the River Tiber where the Roman civilization first developed. How Latin came to be spoken by the Romans are questions that have long been debated but obviously through various external influences resulting from war adventures and conquests[xvi].

ISSN 2581 3382

However, throughout the history of ancient Rome, the spoken language differed in both grammar and vocabulary from that of Latin literature and is referred to as vulgar Latin. In addition to Latin, the Greek language was often spoken by well-educated elite, who studied in school and acquired Greek tutors from among the influx of enslaved educated Greek prisoners of war, captured during the Roman Conquest of Greece. The Editors of Encyclopedia Britannica conceived legal maxim as a broad proposition, traceable to Roman law as commonly used by lawyers, which is more general in scope than ordinary rule of law, though without the dogmatic authority of statutory provisions, but remaining legal policy or ideal that judges had recourse to in deciding cases; e.g The maxim *Lex non cogit ad impossibilia* meaning the law never requires impossibilities could be employed to the situation of an Artist who become ill to excuse himself in a contract of performance, though not part of their contract of engagement with the other party[xvii]. Thus, with the expansion of commerce and industrial activities from the 17th century, English courts were called upon to decide novel cases not specifically covered by common law rules and called in Latin maxims as authoritative principles to support their decisions. Hence, it is apt to state that Latin came to Rome through the Greek philosophers having discovered that Italic alphabets were derived from the Greek and the Phoenicians scripts[xviii].

Though Greek law faded in influence, the Greek legacy in the philosophy of law endures for centuries until it penetrates the Christian tradition first through the Roman jurist and philosopher Cicero who articulated the first and definitive conception of what is called 'natural law. Although Cicero was a legal practitioner who was versed in Roman State's positive law, he sought to situate Roman law to what he considered objective moral truths. Through his work *De Republica* (on the Republic) he echoed Sophocles statement that[xix]:

> *"True law is right reason in agreement with nature,……. to curtail this law is impious, to amend it is illicit, to repeal it impossible…..nor will it be one law at Rome and a different one in Athens, but the same law, eternal and unchangeable".*

The above conception of law set strict moral conditions that putative positive or human-created law must be satisfied to qualify as real law. Cicero's idea gained prominence in the centuries

ISSN 2581 3382

that followed as St. Augustine of Hippo (354 – 430CE) succinctly claimed that "*an unjust law does not seem to be law at all'* which became a slogan within the natural law tradition. Still taking the clue from the Greek philosopher, the Natural law theory was given refinement and its first systematic treatment by the great mind Christian philosopher St. Thomas Aquinas who worked on the basic principles of Aristotle's philosophy of Nature, Value, and Politics which he Aquinas gave a systematic modification by conceptualizing law as an ordinance of reason. He conceived the purpose of the law to serve the common good, and a prescription produced by lawmakers and obeyed by the subjects through an extended exercise of the human capacity to reason[xx]. It is against the above background and concern to breathe life into law to serve its purposeful function of serving the common good that prompted us to use Lord Denning as a model of this pursuit.

Grey adroitly explained the approach of Lord Denning thus: Lord Denning at times explains his approach and the clearest explanation is in *Re Vandervell's Trust No.2.*[xxi] In the earlier case of Re *Vandervell's No 1,* namely *Vandervell Trustees Ltd v. White*[xxii] Mr. Vandervell had attempted to create a trust without entirely disposing of the equitable interest. The House of Lords held that there was a resulting trust for him and taxed him on it. *Re Vandervell's No, 2*[xxiii] resulted from his disposal of the equitable interest that had previously resulted to him without fulfilling the formalities for the disposition of such interest as prescribed by S. 53 of the Act, of 1925.

The questions for determination by the court were whether the resulting trust was a beneficial interest subject to S. 53 of the Property Act 1925 or whether it is merely a beneficial interest of last resort capable of being displaced by any reasonable and clear disposition. Lord Denning opted for the most reasonable decision, in this respect the second alternative. Though this is not a case of estoppel, the philosophical or jurisprudential explanation it evolves logically explains the philosophical thoughts in Lord Denning's approach which could not be encapsulated in a single judgment by this thoughtful judge but by many of his frank and lucid decisions, like in the *High Tree's* Case[xxiv], all of which puts together, forms Lord Denning's testament. Thus, in *Re Vandervell's No (2)*[xxv] *Lord Denning* in explaining his approach started from the maxim *"hard cases make bad law"*

ISSN 2581 3382

> *But it is a maxim that is quite misleading. It should be deleted from our vocabulary. It comes to this, unjust decisions make good law whereas they do nothing of the kind. Every unjust decision is a reproach to the law or to the judge who administers it. If the law should be in danger of doing injustice, then equity should be called in to remedy it".*

From the Point of view of Positivist Certainty Argument

This position of Lord Denning that the streams of equity are never closed would be disgusting to the hard-hearted jurists of positivists orientation and inevitably raise two jurisprudential questions identified by Grey. To start with is the certainty argument. The argument that will inevitably be raised against Lord Denning's view is that of certainty. That the law would not assume a stable state, if a judge should freely decide on the principle that, *'as you liked it* or *'as the justice of the case demands*, rather than following established precedents. The truism, however, is that certainty is a myth otherwise litigations would be a rare phenomenon. It is a fact that, when men are in pursuit of what they thought was a just cause, they often refused to acquiesce to their lawyer's pessimistic technical opinion, but instead persist in the hope that the court will do what is right. Thus, in order not to dash the hope of the common man, the equity should arise to deal with hard cases decisively and to do away with certainty complex that precipitates injustice. This explains the approach of Lord Denning when he broke away with the strict rule of consideration in contractual arrangement to give birth to Promissory Estoppel in the famous *High Tree's Case.*[xxvi]

The Positivist and Need to Recognize Established Legal Rules

The second jurisprudential argument is the need to recognize established legal rules. This is the claim that courts do render *"unjust"* decisions and do so not from spite or ignorance, but in recognition of established "legal rules" that compelled them to those conclusions. Meanwhile, a positivist school, whether of the school of Kelsen nor Hart[xxvii], would insist that, there is an ascertainable body of rules or norms and that the judge has to ascertain and apply these rules or norms that, though there may be times when ethical duties demand a deviation

ISSN 2581 3382

and a different decision from the judge, that, this is outside the scope of the law, lawyers and legal philosophers.

Natural Lawyer and the Anti-Positivist Submission

Nevertheless, a natural lawyer of a Thomistic or Blackstonian[xxviii] bent would be tempted by the opposite conclusion and would propose that there are "laws above the law" that command a judge to do ultimate justice. Grey, however, observed that the difficulties with this view are its vagueness, the impossibility of agreement on just how 'ultimate' the application of these– law is to be, and the lack of a modern, secular basis on which to place it. He acknowledged the fact that one cannot deny the immediate attractiveness of purely natural law, but not all are prepared to make the necessary leap of faith.

It should be quickly added that, contrary to Grey's view, there is no difficulty in the naturalist position, taking equity at its fundamental stand post. Rather than a vague rule, the clear rule is that judges should do what is fair and give a just decision, threading the path of equity and reasonable decision, conscientiously believing that they have done justice in the case, thereby taking the necessary leap of faith. Lord Denning was prepared to do this in most of his decisions. Many more judges did the same to promote justice and arrive at fair and equitable decisions and presents equitable positions.

Dworkin's Position, a Vindication of Lord Denning's Position

Interestingly, a new theory by Dworkin appeared, with a promise to be a most powerful vindication of Lord Denning's approach and equitable position, presenting a philosophical answer to positivism.

According to Grey, then seemingly, positivism began to chip away at Hart's impressive positivist edifice composed of brickwork of rules with an occasional gap left for judicial discretion. Dworkin introduced a new element into the framework and called it a "Principle[xxix]. According to the theory, judges never had unfettered discretion. Their duty was to decide according to well-defined principles which included justice, fairness, and similar concepts.

ISSN 2581 3382

Grey observed that, at first, Dworkin's work was deemed as a minor amendment to the positivist thesis, but Dworkin's later article put an end to such an explanation[xxx]. Thus, the principle superseded rules. Dworkin expressed his view at thus:

> *Indeed, I want to oppose the idea that "the law" is a fixed set of standards of any sort. My point was rather than an accurate summary of the considerations lawyer must take into account, in deciding a particular issue of legal rights and duties would include proposition having the form and force of principles*[xxxi].

Distinguishing the positivist position from Dworkin's principle implies that when the law operates in the hard-line, it is incumbent on the judge to use his discretion to navigate the formalism route with caution in ensuring that the law did not summersault to the pit of injustice. In breaking the shackle of formalism the court must establish a principle using philosophy, sometimes called the wisdom of the court as the threshold. Grey, however, observed other two fundamental positivist attitudes, firstly, that the positivist attitude appears to be an attempt to steer a middle course between pure realism (i.e. observing the law as a scientist) and some of the acceptance of our intuitive notions of justice. It often depends on the isolation of rules and norms but on the imposition of a duty to obey them. Meanwhile, the scientifically observable laws need not be correlated to any judicial duty. Secondly, that another important positivist assumption is a closed system, a game of law. These are rules of the game and these must be obeyed. But are men bound to obey rigidly bad law.? This is anti-Dworkin's position. Meanwhile, Dworkin's position could be itemized as follows:

a. Dworkin has argued convincingly that law is not a game.
b. Dworkin approved of reference by judges to moral principles that underlie the community institutions and laws, in the sense that these principles would figure in a sound theory of law.
c. that ultimately, each judge's duty was to the basic principles of his civilization and fairness among mankind.
d. Dworkin illustrated a "real" natural law, showing how certain principles are and must be applied in real courts avoiding the temptation to postulates theory thereby

ISSN 2581 3382

> avoiding the traditional natural law pitfall while attempting to satisfy and maintain man's *intuitive* insight that law is, to a large extent just and fair.

It is submitted that most of the decisions handed down in estoppel cases are the practical illustration of Dworkin's principle at work. Their Lordships were not blindfolded by precedents by following irredeemably rigid position of law, neither do they asked themselves the theoretical question of What is the law? This is a sociologist, a historian, philosopher, or legal prediction. Rather the judges asked, like Lord Denning *in Re Vandervell's*, what is my duty in this case? And in answering that question finds that he must apply certain principles within a broad framework of philosophical ideas rooted in reasoning, and sometimes logic, and on the whole within the knowledge of sense experience which ensures the prevalence of justice and equity. The principles are distilled from the wisdom of great men and philosophers in history. The judge's minds are the amazing industries of unimaginable ideas and wisdom from the court

The Pluralist Model

As an introduction to a venture of prime importance, Huhn quoted Benjamin N. Cardozo in his book *The Nature of Judicial Process* 10, 1921, where he stated thus[xxxii]:

> *What is it that I do when I decide on a case? To what sources of information do I appeal for guidance? In what proportion do I permit them to contribute to the result? In what proportions ought they to contribute? If a precedent is applicable, when do I refuse to follow it? If no precedent is applicable, how do I reach the rule that will make a precedent for me in the future? If I am seeking logical consistency, the symmetry of the legal structure, how far shall I seek it? At what point shall the quest be halted by some discrepant custom, by some consideration of the social welfare, by my own or the common standards of justice and morals? Into that strange compound which is brewed daily in the caldron*

ISSN 2581 3382

> *of the courts, all these ingredients enter in varying proportions.*

From this remark, his Lordship was talking about the skill and methods of legal reasoning. The purpose of Huhn's article is to describe a pluralistic model of reasoning that might be used to teach the skills of legal analysis, identifying different legal arguments with specific schools of jurisprudence or moral philosophy which is the standard approach usually followed by leading scholars. Such scholars as enumerated by Huhn[xxxiii] include:

(a) Lon L. Fuller in the case of the Spenluncean Explorers[xxxiv],

(b) R. Randall Kelso, who identified four schools of thought that have dominated the history of the American Supreme Court at different periods of American history[xxxv].

(c) Richard Posner and Vincent Wellman who also identified the three categories of Legal Reasoning namely, Formalism, Analogy, And Realism[xxxvi]

(d) Akhil Amar perspective which states that text, history, structure, prudence, and doctrine, are the basic building blocks of conventional constitutional arguments[xxxvii]

(e) Eskridge and Frickey that described their approach to statutory interpretation as an approach where a court considers a broad range of textual, historical, and evaluative evidence when it interprets statutes calling it eclectic and polycentric

It should be noted that the court considers a broad range of issues in the process of interpretation of statutes, deciphering the intention of parties to contractual agreements. This broad range of issues could be termed eclectic and polycentric. According to Dorf, eclectic was used to describe theories that recognize that courts employ a variety of forms of argument. Polycentric means the existence of several or many centers of power within the system. However, the term pluralistic according to Huhn seems desirable. The term "pluralistic" emanates from Griffin and he defined the term as theories of constitutional interpretations[xxxviii] and further explained the four main Approaches of Constitutional Interpretation in American Legal History[xxxix].

Griffin himself traced the pluralism approach to Justice Joseph Story, who explicitly looked to text, intent, and precedent in interpreting the constitution. Meanwhile, William accepts the term "pluralistic*"* for his descriptive model of the legal argument for the following reasons:

a- because it reflects the fact that law arises from value choices made by different persons at different times

ISSN 2581 3382

b- because it acknowledges that there are different ways to determine what choices people ranging from heads of administrative agencies, judges, legislators, contacting parties made.

c- there are a variety of methods for interpreting the law people have made and consequently our interpretations of law are sometimes contradictory.

The leading exponents of the pluralistic approach to legal analysis according to Huhn are Philip Bobbilt, William Eskridge, and Philip Frickey who share a profound understanding of the nature of the law. In their view, the law essentially is not a unitary system that could be explained by a grand unifying theory as postulated by Dorf[xl] According to the above postulation, our system of law is characteristic by the fact that multiple legitimate forms of the legal system exist for its interpretation. For illustrative purposes, Bobbit has identified six heuristic devices which he termed modalities, used purposely in interpreting the constitution[xli]. These six modalities are:

a. historical
b. textual
c. structural
d. doctrinal
e. ethical and
f. prudential

Bobbit contends that the above modalities are the legitimate means of interpreting the constitution and there are no other constitutional legal means of interpreting the above modalities.

Meanwhile, Huhn[xlii] distinguished pluralism from other theories, firstly, the foundational theories, and secondly rule skepticism. Contrasting foundational theories of legal interpretation from pluralistic theories, foundational theories attempt to explain or justify the law in terms of a single modality interpretative device. Fundamentally, it is the contention of the foundational theories that the law is legitimately based upon one method of interpretation. The advantage of which is that it makes the law predictable and determinable. Meanwhile, it has the demerit of accepting one conception of justice as valid.

ISSN 2581 3382

In contrast, pluralism theories recognized different and often contradictory conceptions of justice. This is reflected in different interpretive modalities. Thus, for the pluralistic, law is inherently indeterminate since a valid legal argument exists regarding the interpretation of the law. The pluralistic model of law is quite a distinct form of rule skepticism. The rule skeptic asserts that all law is court-made law. That judges are the final arbiters of all decisions. Thus, skepticism in law has arisen in the late nineteenth century, not merely as a protest against the idea of natural law, but also as a reaction against the formalism of legal positivists.

Legal skepticism is also commonly referred to as legal realism. According to Hart[xliii], It is possible that, in a given society, judges might always first reach their decisions intuitively or by hunches, and then merely choose from a catalog of legal rules one which, they pretended, resembled the case in hand they might then claim that this was the rule which they regarded as requiring their decision, although nothing else in their actions or words suggested that they regarded it as a rule binding on them.

LEGAL ARGUMENTS WITHIN SPECIFIC SCHOOL OF JURISPRUDENCE

At this stage, it is desirable to ask the question, what do justices do, when they decided to judge a case and to what sources of information do they appeal for guidance, and to what extent do they permit the intrusion of such information? In answering these questions, we have no note that philosophers are the best-known linguistic analysts, though lawyers are also known to be experts in the area. The fact, however, remains that philosopher holds the best rudder in the language game. The first work to be considered, which identified legal arguments within the specific school of jurisprudence would be that of Huhn[xliv]. His work described a pluralistic model of legal reasoning which might be used to teach the skills of legal analysis towards deciphering the reasoning of the court while deciding a case. He presented five types of legal arguments viz; text, intent, precedent, tradition, and policy analysis. These legal arguments would be considered seriatim:

Text

The starting point of Huhn's legal arguments is the text which consists of written laws, written charter or agreement used to record rights and obligations of parties to formal contracts. Also,

ISSN 2581 3382

the constitution should be written to be considered as binding law wherein the power and limitations of a governmental institution are carefully coded in addition to the responsibilities of the states and the rights and obligations of its citizenry. Before a wrong could be considered as a crime under the criminal law, such wrong must be clearly defined as such by the criminal law. Administrative regulations are not effective until they are effectively published in the government gazettes. A will is to be effective only when it is committed into writing and fulfils the requirements of a valid will before the presumption of regularity could be made applicable. Also, the statute of fraud and the Parol Evidence Rule requires written evidence of some specific types of contracts.

The question is to what indices can the courts commit themselves to interpret these documents in determining the rights and liabilities of disputants? One of the best indices of language analysis common but not peculiar to philosophy is textual or language analysis.

According to Huhn[xlv] textual analysis looks to the language used in the legal document under review and such review, there are different textual methods of interpretation namely: plain meaning, intratextual arguments, and the canon of constructions. Using the words of Huhn, to employ "plain meaning" as a method of reasoning is to assert that the legal text does not need interpretation and the language is clear on its face. Thus, when ambiguity is ruled out, the meaning of a text is said to be apparent from the text itself, devoid of ambiguity. Meanwhile, intratextual arguments are interpretive techniques that use one part of a document to give meaning to another part. Akhil Amar was quoted by Huhn to have coined the term intratextual to describe this method of interpretation[xlvi]. Huhn posits that intratextual arguments follow one or two formats.

Firstly, they either compare the words used in one part of the text with the words used in another part, or secondly, they deduced the meaning of portions of the text from their position within the organization of the text. Huhn cited the most famous examples of these interpretative methods which appear in the United State of American case of *McCulloch v. Maryland*[xlvii] where Chief Justice John Marshall utilized both types of intertextual arguments to interpret the Necessary and Proper Clause in defining the implied powers of congress in Articles 1, Section 8, clause 18 of the constitution. Firstly, Justice Marshall compared the word "necessary" from the necessary and proper clause to the words Necessary" used in Article 1, section 10, limiting

ISSN 2581 3382

the power of the states to impose duties and concluded that the term "necessary and proper" was intended to be more expansive than the term necessary.

As per the canons of construction, they are rules of inference used for the interpretation of the legal text. These canons are said to be to law, what the rules of syntax are to grammar. For illustrative purpose, Justice John Marshall[xlviii] was said to have used textual canon in interpreting the United States Constitution in the case of *Marbury v. Madison*[xlix] when he said "It cannot be presumed that any clause in the constitution is intended to be without effect".

The above methods of interpreting a text purport to achieve an objective definition of the words of the text and it is this quest for objectivity and bright-line rules that drawn many jurists and scholars like philosophers to textual analysis.

Intent

Another index which the courts look to for guidance in deciding a case is the intent of the people who wrote the text. Accordingly, Huhn posits that the fundamental precept of democracy is that governments derive their just powers from the consent of the governed, and, accordingly the intent of the drafter of a law is a principal method of interpretation. In constitutional law, for example, this method of interpretation is known as original intent or the intent of the framers. Thus, questions of statutory interpretation are resolved by reference to the intent of the legislature. Courts may also consider the regulatory intent in determining the meaning of agency rules. Meanwhile, it should be noted that traditional treatises on statutory interpretation generally in the addendum, following the principle of freedom of contract and personal autonomy, the law of contracts looks to the intent of the parties. In interpreting the words of a contract, we generally seek the meaning of the words of the contract and the intention of the parties. But, here we acknowledge the primacy of legislative intent. This method of interpretation with particular reference to the interpretation of statutes is referred to as the golden rule of interpretation. Thus, contracting parties gave different meanings to the words of the contract and differing intentions, the court must determine to which of the meaning and the intent to which legal effect is to be given. Nevertheless, in the construction or interpretation of the contracts, the primary purpose and the guideline for the decision, the controlling factor, and indeed the very foundation of the rules for construction and interpretation of the contract are the intentions of the parties.

ISSN 2581 3382

According to Larry Alexander[l]:

> *in contrast, clear text may control intent; one can make authorial intentions the touchstone of authoritative meanings so long as these meanings are not inconsistent with conventional understandings of the words. Thus, it is obvious that the conflict between text and intent arises in the context of the interpretation of a contract as well.*

One goal of contract law is to enforce contracts as written so as not to jeopardize the certainty of contractual duties that parties have a right to rely on. But contract law has other, competing goals as well. One such goal is to interpret and enforces the contracts in the light of the reasonable expectations the parties had, at the time the contract was made[li].

Precedent

Judicial precedent has been one of the most profound guides for the court in deciding a case. It is an authority for a subsequent pronouncement of the court. At common law, the court gives serious consideration to prior pronouncements of the Supreme Court as to the meaning of the case. It is an authority for a subsequent pronouncement of the court. At common law, the court gives serious consideration to prior pronouncements of the Supreme Court as to the meaning of the law. Meanwhile, under Civil Law, the court considers judicial decisions not as a source of law but as a directory opinion on the meaning of the law[lii] Huhn stated the fact that the principle of *stare decisis* is what lends strength to precedents and that the most dramatic invocation of the principle of *stare decisis* could be found in the plurality opinion from the case of *Planned Parenthood of Southeastern Pennsylvania v Case*[liii] where Justice O'Connor, Kennedy, and Souter reaffirmed the decision in *Roe v. Wade*[liv] despite their doubts that *Roe v. Wade*[lv] had been correctly decided. Thus, after declaring that liberty finds no refuge in a jurisprudence of doubt, they articulated guidelines for determining when constitutional precedent must be followed and when it may be overruled.

As Huhn puts it[lvi], the principle of stare decisis militates against the reversal of precedent. In the context of constitutional law, the leading authority defining the scope of stare decisis is the plurality of opinion of Justices Kennedy O'Connor, and Souter from *Planned Parenthood of*

ISSN 2581 3382

Southeastern Pa v. Casey[lvii] The four factors considered as the wisdom guides by the court whether to overrule the precedent laid down in *Roe v. Wade*[lviii] are as follows:

a. the workability of the existing rule
b. society reliance on the existing rule.
c. whether the rule had been undermined by subsequent decisions and
d. whether the premises of fact underlying the decisions had changed.

Also, in the case of *Rutan v Republican Party of Illinois*[lix], Justice Scalia put it thus:

> *One is reluctant to depart from precedent, but when that precedent is not only wrong not only recent, not only contradicted by a long prior tradition but also has proved unworkable in practice, then all reluctance to depart ought to disappear.*

Tradition

As Sunstein puts it:

> *the common law has often been understood as a result of social custom rather than an imposition of judicial will.*

According to this view, it means simply that the common law implements the customs of the people, meaning that the common law is nothing but the reflection of the people and that it does not impose the judgment of any sovereign body. Huhn identified instances where the law is a reflection of tradition in the United States of America thus:

(i) He identified tradition as the touchstone for determining citizenry's fundamental right in the United States of America.
(ii) American constitutional rights are rooted in the traditions and conscience of the American people.
(iii) Tradition is the authority for the interpretation of the principle of federalism
(iv) It is the authority for the implied powers of the President

ISSN 2581 3382

PHILOSOPHY, THE RULE OF LOGIC, LINGUISTIC ANALYSIS AND LAW

The word logic emanates from the Greek word logos'. It is the study of the principles of valid inference demonstrable by preliminary arguments or preliminaries called premises. It is the drawing of a plausible conclusion otherwise called inference from premises. It is the set of the method, used to solve philosophical problems to arrive at a valid argument. Philosophies are masters of argument using logic and deductive reasoning. It could be argued that lawyers and philosophers suck at the breast of the same Mole in that whilst philosophers used logic to solve philosophical problems, lawyers employ logic and reasoning to solve complex legal arguments and to arrive at a plausibly valid judgment. There are four types of logical argument from logic;

i. Inductive
ii. Deductive.
iii. Reductive or eliminatory

In an inductive logical argument, the judge holds up a specific example and then claims what is good for it must be good for the general category of the same class. For example, in philosophy, I can state that orange and pineapple are sweet. Eventually from these species of the same genre, I can state that all orange and pineapple are sweet, one can exemplify this by looking at the South Africa case of *Malandzi v State*.

Deductive logical reasoning works in the opposite. It starts with a general or universal rule acceptable by most people and then applies the rule to specific, all pineapples and oranges are sweet, and therefore an orange or pineapple must be sweet.

In Eliminatory or Reductive logic, conclusions are reached through the process of eliminatory. The ways out of the buildings are the front doors, the windows, and the fire escape burglary proof. The front door and the window are securely locked, therefore, the thieves must have taken the fire escape burglary as an exit route.

Syllogism in logic is a form of logical reasoning that joins two or more premises together to arrive at a conclusion or to draw an inference.

If	=	A	is	B
And	=	B	is	C

ISSN 2581 3382

Therefore = A is C

If Tunde is a Thief
And Rayo is a Thief
Tunde is the same with Rayo is B

Another example of Syllogism that one can deploy in solving a legal problem is a conditional statement. If and then statement. To demonstrate this, we can use the provision of Section 8 of the Nigeria Criminal Code as an example. The Section states that: *If two or more people form a common intention to prosecute an unlawful purpose and then another offense is committed of such a nature that, such other offense is the consequence of that common intention, all of them could be said to have committed the offense under section 8 of the Criminal Code.* If for example Tunde a doctor and Sherrif a Nurse has common intention to prosecute an unlawful purpose, to wit abortion and then, another offense namely murder is committed while procuring the abortion; the consequent is that Tunde and Sheriff are Section 8 offender.

In this situation, the antecedent agrees with the consequent and the consequent must agree with the antecedent. An example of this can be vividly illustrated by the writing encounter with the Director of DSS in my State. In the year when I was contesting for the chairmanship of my Local Government, I was attacked by some boys at the instigation of a rival politician. In the process of an attempt to dealt a matchet blow on one of my boys, they mistakenly macheted another person of their group. In this confusion, they stopped fighting my boys and took their colleagues to the hospital. Happily, I was able to record the incident where I was. They decided to use a doctor to write an incriminating Medical Report against me that I instigated one of my boys to shoot the victim. It was a Saturday evening. On Monday, I was invited by the then State Director of the Department of State Security. When I got there, they took me to a room and gave me a booklet to write a statement about the incident. I insisted that I would not write any until I read the petition that was written against me, then the Director agreed with me. An annexure to the petition was the Medical Report purportedly written by a compromised Medical Practitioner to incriminate me and it read thus: *There was a deep hole In the wound, I could not find any pellet or metal object inside the wound, It may be a local bullet that brushes through*. When I read this statement, I started to explain to the Director of DSS who was himself

ISSN 2581 3382

a lawyer by asking some convincing question: First, that, If there was a deep hole in the wound, how on earth would there not be a pellet or metal object inside the deep hole; and second; if it was a local bullet that brushes through, why would there be a deep hole. Then, I concluded with the statement, that the antecedent denied the consequent and the consequent denied the antecedent. Alas! I won the battle and the State Director said I should go with my boy. The conflict was over. That is a lawyer, using philosophical weaponry to defeat a political adversary, now my bosom friend. Simply the co-relation between philosophy and law is a tight one when it comes to the adoption of methods of argument.

Linguistic analysis is another philosophical weapon. The use of linguistic analysis could be discovered in the work of Bertrand Russell and Ludwig Wittgenstein. Taking Russell as our first example, the theory of logico- atomism is a crucial tool in Russell's philosophical thought, wherein he conceived the idea that "through rigorous and exacting analysis, a statement could be broken down into its atomistic unit and through the examination of this atoms, we could examine the unit and expose its underline assumptions to determined its truth and validity.

In essence, the examination and the application of the concepts of logical atomism to language reveal the complexity of the concepts, their truth, and validity. For example, we can apply the validity test to examine the validity or otherwise of statements of two cases in Nigeria. It is not an injustice to rule that a debtor should not pay his creditor in Nigeria.

Breaking this statement into its atomistic unit implies:

(a) There is justice in Nigeria

(b) The rule is that the debtor in Nigeria should not pay his creditor

(c) And it is not an injustice under the law in Nigeria to refuse to pay one's creditor.

Testing the validity of this statement, one could see that, it could not be true that it is justice for the law to support a debtor not to pay his creditor. The statement is therefore not true and therefore its invalidity is self-revealing. Viewed in this way, one could criticize such a line of judgment and precedental relevance and validity of the line of authorities of the cases like *Savannah Bank of Nigeria Ltd. v. Ajilo.*

ISSN 2581 3382

SIMILARITY BETWEEN THE THINKING OF THE COURT IN ESTOPPEL CASES AND THAT OF THE PHILOSOPHERS

From the point of conceptual analysis, there is a striking similarity between the court's thinking process and that of the philosophers throughout the ages. Jurisprudence itself means the philosophy of law. What is the meaning of these two synonymous concepts? Firstly, what is the Philosophy of law*?* Philosophy of law is a branch of philosophy and jurisprudence that studies basic questions about law and legal systems, such as: What is the law? And or what are the criteria for legal validity? etc[lx].

Philosophy of law has been conceptualized as the formulation of concepts and theories to aid in understanding the nature of law, the sources of its authority, and its role in society[lxi]. Philosophy is further conceptualized as an academic discipline that exercises reason and logic in an attempt to understand reality and answer the fundamental question about knowledge, life, morality, and human nature[lxii]. It is also a theory of attitude that acts as a guiding principle for behavior. Philosophy originates from the Greek word, *Philosophia* – meaning: love of wisdom. Jurisprudence is the science or philosophy of law. It originates from the Latin word *Jurisprudential*, from the combination of the word *"Jus"* meaning law *prudential*, meaning foreseeing, knowledge, skill, or prudent. Jurisprudence by its legal definition is the study of the fundamental structure of a particular legal system or the knowledge of what transpires in court or legal systems in general[lxiii].

From the above conceptual analysis, the similarities between the thinking and reasoning of the courts - jurisprudence and the thinking and reasoning of philosophers – philosophy are as follows:

a. both studies basic question about the rules that should govern the society i.e. law.
b. they both explicate what should be the criteria for the validity of the rules and relations i.e. law that governs the society.
c. philosophers and judges formulate concepts and theories to aid the understanding of the nature of rules and regulations i.e. law, and the source of authority to justify the roles of the legal system in society.
d. both disciplines involve logic and reasoning in an attempt to understand the reality and fundamentals of life situations.

ISSN 2581 3382

e. they are both theoretical standards that act as the guiding principles for behavior
f. they have a common origin rooted in Latin and French words in their quests for wisdom or understanding or prudency through knowledge.

Jurisprudence as an Explanation of the underneath philosophy behind the decisions of the court

The basic thrust of jurisprudence, otherwise known as the philosophy of law is to explain the underneath philosophy behind the decisions of the court. Essentially, it is obvious that what the judges have been doing during the process of legal analysis and in the course of legal reasoning is in tandem with what the philosophers have been doing over the ages. The similarities and the nexus between philosophical analysis and reasoning by philosophers to legal analysis and reasoning by the courts in the course of adjudication and dissemination of justice in conflictual situations are profound.

Philosophy as the Foundation of all Studies

Philosophy could be said to be at the foundation of all studies in its quest for understanding reality. Philosophy has contributed immensely to humanity than any field of study. Thus, philosophy alongside man continues in its quest for knowledge and ultimate certitude, and philosophers and legal theorists and jurists till date have not ceased to continue seeking the goal of certitude or truth.

Law from the Point of Views of Philosophers

In our explanation of the relationship between Philosophy, Jurisprudence, and Law, it is submitted that many Philosophers have expressed their views in the frontline of knowledge and the inference we could draw from their views is that the subject matter of Law reflects the goals of Philosophical adventure. Some of these Philosophers and certain Philosophical Schools are focal points in this regard.

From Plato and Aristotle

Using the statement by Plato, the mastermind as our starting point, *'truth lies already in man which he has still yet to recollect'*. In the words of Aristotle, the truth which is needed to be laboured upon to grasp it, for the mind yet has not yet had the tools for grasping it. The implication of this Aristotelian impossibility is that truth cannot be certain in as much as new

ISSN 2581 3382

reality continues to unfold unabated. Thus, with changes, reality would continue to vary from one epoch to another and the mind can never be at rest in attaining the goal of certitude. As new reality unfold itself, the jurisprudence of law is altered and law in its dynamic role will follow suit.

The Rationalist, Empiricist, Immanuel Kant, and Hegelian Metaphysics

Essentially, there is a great divide in the history of Western philosophy situates in the modern period. Rationalist philosophers thought that truth could be attained by following strict logical rules. This contrast with the empiricist to whose truths are to be derived from sense experience. The two positions seem conflictual. This fact would lead us to Immanuel Kant in his *synthesis of the great divide,* but taking a clue from the Hegelian metaphysics. Hegel Loathe for certain rules in logic stems from his conviction that logic strictly promotes non–contradiction, but to him, he views reality differently in that it transcends the rule of logic. Hegelian dialectical idealism is grounded in simple techniques. It always begins a discussion of the most obvious aspects of any problem. This Socratic assumption was that by progressively correcting incomplete or inaccurate notions, he could coax the truth out of anyone.

Thus, the phrase progressively correcting incomplete notions signifies the similarity of how Hegel's dialectic would manifest, as progress implies time which is an important notion in Hegel's viewpoint, and as *"correcting"* implies the negation of the negation, in general terms, which negation is also a key concept in Hegelian system, whilst idealism is understood to be that pertaining solely to the reason which gives off-shoots to the abstract for the reason is to abstraction which combination of that progressively correcting with the abstract or idea gives an aerial view of Hegel's system.

Hegel fashioned the world according to what he thinks to be, as a spirit that is never at rest but always engaged in moving forward. In his *Phenomenology of the Spirit*, which according to Hegel defy logic with the principle of non–contradiction, for Hegel, the first is to compartmentalize then later on unify. First is the beginning, which is the start of something. Next is the processor stage of becoming and last is the result, which is at the point of stoppage until it reaches the absolute.

ISSN 2581 3382

Meanwhile, it should be noted that Hegel took their dialectical self – movement of thought from *Kant's triadic table of categories.* Kant[lxiv] wrote:

> *in every class, there is the same number of categories, namely three which again makes us ponder, because, generally, all divisions are apriori by means of concepts must be a dichotomy. It should be remarked also that the third category always arises from the combination of the second with the first.*

From this Kantian triadic process of conceptual combination, *Fitche* and subsequently Hegel formed their so-called dialectical movement of concepts. Hegelian dialectical shapes our perception of the world, we do not know how we are helping to implement the vision. When we remained locked in dialectic thinking, we cannot see out of the box. *Hegel* dialectic is the tool that manipulates us into a frenzied circular pattern of thought and actions. Every time we fight or defend against an ideology, we are playing a necessary role in Hegelian thought. Hegelian conflicts steer every political arena on the planet.

Dialogues and consensus-building are primary tools of dialectic. Once we get what's going on, we can cut the strings and move our lives in original directions outside the confines of the dialectical madness. Focusing on Hegel's ultimate agenda enables us to avoid getting caught up in their impenetrable theories of social evolution, which allows us to think and act our way toward freedom, justice, and genuine liberty for all.

Simply put, Hegelian metaphysics represents the thinking of most philosophers throughout the ages. From Socrates, who though never authored a book, but, the immorality of whose soul and philosophical thought was made possible by two of his pupils in succession, namely; Plato and Aristotle. Socrates would go from one place to another to introduce a topic of discussion, say, justice, love, good, evil, etc, and from the conception of A to B, to C, etc. From one view to another, progressively correcting incorrect or inaccurate or incomplete opinions and notions, asking questions along with the discussion, he was able to coax the truth from anyone. This involves conflicts of opposite from which one arrives from uncertainty to certainty, which

ISSN 2581 3382

could start all over again. Rationalism and Empiricism philosophical thoughts are also contradictory.

Kant's triadic table of categories also implies three stages of the dialectic triad. For example, when you start a debate about an unknown or abstract concept, you are seeking certainty. You are starting from the unknown which is the first stage, the second stage is the argument from two opposites until one argument extinguished the other, this is the second stage i.e. the dialectic stage, at the next stage, you agreed on something like the truth position or a position nearest to the truth. This is the third stage. But as society changes, you start the dialectic process all over again. We can place the Scenario side by side with the development of common Law within the complex abstract, and the emergence of the office of the Chancellor which led to friction between the common Law Court led by Sir Edward Coke, the Chief Justice of the Common Law Court, and Lord Ellesmere of the Court of Chancery as a significant period of contradiction and then the prevalence of equity which led to the merger of the two systems as the period of certainty within the Socratic view, Hegelian metaphysics and the Kantian triadic table. This is one masterpiece of philosophical thinking as explained in *Hegelian* metaphysics. Simply put from thesis i.e. the beginning, to antithesis- the contradiction or dialectic to synthesis, the final stage when you arrived at the truth or position as near truth as possible, which could start all over as the internal dynamics of the society changes.

Thesis ⟹ *antithesis* ⟹ *synthesis*

The crux of the matter is that the *Hegelian* process of change in which a concept or its realization passes over into and is preserved and fulfilled by its opposite, developed through the stages of thesis, antithesis, and synthesis is the constitutional state of the free citizen. It is any systematic reasoning, exposition, or argument that juxtaposes, opposes, or contradicts ideas and usually seeks to resolve their tension or opposite between two interactive forces or elements.

To appreciate the position is to state that the adventure of the philosophers is akin to that of the court and in fact in accord with what lawyers have been doing over the ages. The development of the doctrine of promissory estoppel and its aftermath in the law of contract could be juxtaposed within Huhn's spectrum of movement of jurisprudential from analogy to realism.

ISSN 2581 3382

THE DEFINITIONS OF FORMALISM, ANALOGY, AND REALISM

Formalism is the application of an existing rule of law by its term to a set of facts[lxv]. As Shaver puts it:

> *with accelerating frequency, legal decisions and theories are condemned as "formalist or formalistic. But what is formalism and what is so bad about it? At the heart of the word "formalism" in many of its numerous uses, lies the concept of decision making according to rule in so far as the formalism is frequently condemned as excessive reliance on the language of a rule, it is the very idea of decision making by the rule that is being condemned.*

In the words of Huhn, by its very nature, formalism is deductive in structure, as it conforms to the structure of syllogism of deductive logic, which starts from premises to conclusion[lxvi]. The rule of law is the major premise whilst the facts of the case are the minor premise and the legal result is the conclusion. Thus, according to Judge Patria Wald[lxvii]*:*

> *the plain meaning Rule basically articulates a hierarchy of sources from which to divine legislative intent. The text comes first, and if it is clearly dispositive, then the inquiry is at an end".*

From the above, one could submit that most of the formalists favour textual analysis and rely mostly on the plain meaning of the wordings of the legal document to arrive at an objective definition of the text itself. Huhn, however, made it clear that formalism is not limited to textualism in that specific rules may be derived from an examination of the intention of the legislature, from specific traditions, and also policy arguments[lxviii]. Justice Scalia noted the unfortunate consequences of refusal to follow rule thus:

> *Equality of treatment is difficult to demonstrate and, in a multitier judicial system, impossible to achieve, predictability is destroyed, judicial*

ISSN 2581 3382

> *arbitrariness is facilitated, and judicial courage is impaired*[lxix].

The devotion to formalism is the hallmark of Justice Scalia's jurisprudence. He captured the essence of his jurisprudence in the aphorism that

> *A rule of law that binds neither by text nor any particular identifiable tradition is no rule of law at all*[lxx].

Analogy

Meanwhile, where the facts of the case under consideration are dissimilar to the first case the terms of the rule applicable to the first case cannot apply to the second case. The deviating judicial decision of the second case could therefore lay a standard. It should be noted that Huhn observed that while formalism is scientific and grounded in logic, analogical reasoning, according to Emily Sherwin is an art that is grounded in rhetoric[lxxi]. Sherwin enumerated some benefit of reasoning by analogy by positing that:

> *In my view, the virtue of analogical reasoning lies in a variety of indirect benefits that are likely to result when judges adopt it as a practice and consider themselves obliged to explain new decisions in terms of their relation to past cases. First, a diligent process of studying and comparing prior decisions produces a wealth of data for decision making; second, the rules and principles that result from analogical reasoning represent the collaborative efforts of a number of judges over time. Third, analogical reasoning tends to correct*
>
> *biases that might otherwise lead judges to discount the likelihood or importance of reliance on prior decisions. Fourth, analogical reasoning exerts a conservative force on the law by holding the development of law to a gradual place, it*

ISSN 2581 3382

> *limits the scope of error and contributed to public acceptance of law as a standard of conduct*[lxxii].

Meanwhile, Brewer describes two schools of thought regarding reasoning by analogy, which he called "mystic" and "skeptics". In his words:

> *Theories of analogy differ from each other in the degree of rational force they attribute to the analogical argument. In one group are the "mystic" who place a high degree of confidence in neither analogical argument even though they neither have nor feel the need for an explanation of its characteristic concepts of "relevance" and "similarity". In the other group are the "skeptics" who have rather less confidence in the rational force of analytical argument*[lxxiii].

Meanwhile, Alexander presented a powerful dissenting voice. Alexander contends that, reasoning by analogy boils down to either formalism or realism, and that analogical reasoning, therefore should not be treated as a separate category[lxxiv]. However, Huhn disagrees with the above line of reasoning, contending that there is something special about analogical reasoning. And, precisely, what is special about analogical reasoning is that it serves as the link between formalism and realism[lxxv].

We are in tandem with the argument presented by Huhn. In the structure of this grandiose presentation, where he puts forward the positions that:

a. to reason by analogy is to find similarities between the situation at hand and other known situations.
b. that in law, the most common source of analogical reasoning is the use of precedent
c. that in common law, Jurisprudential systems, court decisions are recognized as a valid source of law. This observation is in line with the jurisprudence of Lord Chief Justice Edward Coke and Mathew Hale that invested precedent with the force of law[lxxvi].
d. when a previously decided case is discovered to be "on point" the rule of the previous case then governs the case to be decided.

ISSN 2581 3382

e. but, when the previous case is not precisely on point with the case to be decided, the court must decide whether the previous case is sufficiently analogous for its rule to govern the case to be decided.
f. where it happens that, that is more than one case that applies to the case at hand, in that case, a court that reason by analogy must decide or determines which of the previous cases is most similar to the case under consideration[lxxvii].

Nevertheless, it is safe to state that, where none of the previously decided cases is sufficiently analogous to the case to be decided, nor where the previous decisions would occasion a substantial miscarriage of justice, the court in the pursuit of what is fair and just may turn to the realist approach, in which case, reasoning by analogy opens the gate for the realist to come in. In concluding the discussion on reasoning by analogy, it should be noted that scholars have distinguished between formalistic analogy and realistic analogy. A formalist analogy is based upon the similarities of the cited case and the facts of the case under consideration. Sunstein, citing Holme's notorious opinion in *Buck v.Bell*[lxxviii] example of bad formalist analogy, cites the weakness inherent in pure factual analogies thus;

> *Formalist analogy thinking is no better than any other kind of bad formalism. Different factual situations are inarticulate; they do not impose order on themselves. Patterns are made, not simply found. Whether one case is analogous to another depends on a substantive idea that must be classified*[lxxix].

On the other hand, a realist analogy is based upon the similarities between the values served by the rule of law from the cited case and the values that are at stake in the case at hand. According to Alexander:

> *It is the principle immanent in past decisions that are the gauge of relevant 'likeness' and 'unlikeness' in analogical reasoning from the case*[lxxx].

ISSN 2581 3382

Also, Dickson noted that law unlike science is the result of value judgments rather than the judgment of fact". He explained that:

> *The choice which a judge makes of one analogy rather than another is an expression of a value judgment and the possibility of competing analogies, therefore, arises not merely or so much out of the doubtfulness of the factual resemblances among his materials but rather out of the possibility of differences of opinion as to the comparative value of the different results which one analogy or the other would bring about*[lxxxi].

Realism: Posner conceptualized legal realism as "the use of policy analysis in legal reasoning[lxxxii]. According to Huhn, legal realism, also called policy analysis or practical reasoning, emerged from the British school of utilitarianism and the American philosophy of pragmatism. Thus, it is said to be an end – means analysis that entails a judicial balancing of the costs and benefits of a legal outcome. It is said to be a method of legal reasoning that determines what the law is, not by invoking categorical legal principles, but rather by considering the law's probable consequences.

In essence, it implies that law should be interpreted by inquiring into the underlying purpose of the law. Even, at common law, the principle that statutes should be interpreted in light of their legislative purpose is centuries old. In *Heydon's case*[lxxxiii], Lord Chief Justice Coke advised judges to take the following factors into account in the interpretation of statutes:

a. what was the common law position before the making of the Act?
b. what was the mischief and defect for which the common law did not provide a remedy?
c. what remedy did the parliament hath resolved and provided to cure the defect?
d. what was the true reason of the remedy and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and suppress the subtle inventions and evasions for the continuance of the mischief,

ISSN 2581 3382

> and *pro privato commodo*, and to add force and life to the cure and remedy according to the true intent of the makers of the Act, *probono publico*?

The innuendo to be drawn is that the court should not seek literal definitions of the terms of the law but rather seek to fulfil the values that the law is intended to serve. It is instructive to note that, the guiding principle of legal realism was expressed by one of American most eloquent jurist, the Supreme Court Justice Benjamin Cardozo, who stated that:

> *The final cause of law is the welfare of society. The rule that misses its aim cannot justify its existence logic and history and custom have their place." We will shape the law to conform to them when we may, but only within bounds. The end which the law serves will dominate them all*[lxxxiv].

Huhn states how realist legal reasoning operates viz:

a. when two existing rules of law arguably apply by analogy to the present case, legal realists choose between them by determining which of the rules better achieves the underlying purposes of the law in the case under consideration. This is realistic analogical reasoning.
b. if neither of the existing rules precisely serves the values that are at stake in the case under consideration, then, it is necessary to construct a new rule[lxxxv].

In Huhn's summation, legal realism is, therefore, the identification, interpretation, and creation of rules of law in light of the intended purposes, underlying values, and likely consequences of the law. First, before all the rules of the law of contracts were developed, it must start from when there was no rule governing contractual relationship at all. Secondly, and thereafter, the element or the requirements of a valid contract developed namely: offer, acceptance, valuable consideration, and finally, intention to enter into a legal relation. We must have started from a position not at all an ideal one – the thesis – to the position of arguments and counter-arguments to conceptualize an ideal position, which may still be subjected to change in the future-antithesis-before we got to an ideal or near-ideal situation i.e. the synthesis which may still be subjected to change in response to changes in factual situations to begin the cycle all over again.

ISSN 2581 3382

Let us take the third element into the making of a valid contract i.e. the requirement of valuable consideration which is the contribution of each party to a contract. For illustrative purposes, if I am to sell my car to Dotun, Dotun must be willing to pay the agreed price for my car say ₦200,000 (Two Hundred Thousand Naira). Dotun's contribution is ₦200,000, Naira and this represents a detriment or something that Dotun gave to get a benefit, now my car. My contribution to the contract is the car I am giving out which represents the sacrifice I made or the detriment I suffered to obtain the cash of ₦200,000. On that position, if Dotun now begged me to obtain ₦150,000 naira, after that first agreement had been made, the law of contract deemed this is a new contract entirely. If I now decided to accept the ₦150,000 it amounted to the variation of my contractual right. If peradventure Dotun now gave me ₦150,000 and thereafter I demanded the balance which Dotun refused. Definitely, in litigation, Dotun cannot succeed because he contributed nothing to the second agreement where I agreed to accept ₦150,000 naira instead of the previously agreed sum of ₦200,000 naira. This was the common law position that: consideration must move from the promise and for a person to be able to sue and be sued, he must have shown that he contributed something to the contract, it is this contribution that is called consideration. This position concerning the development of promissory estoppel started from the *Pinnel's case*[lxxxvi] where the Court of Common Pleas presided over by Lord Coke decided that the payment of a lesser sum could not discharge a debtor from the obligation to pay the full amount of his debt, the consent of the plaintiff notwithstanding. This case represents the starting point – *the thesis.*

The *Pinnel's case*[lxxxvii] listed some exceptions to this position, and that was the rider, that except there was an introduction of a new element into the contract, at the creditor's request e.g. robes hawk or horse or part payment at a different place or an early date. This led to the next stage in the development of the principle of promissory estoppel – the antithesis.

In *Cumber v. Wane*[lxxxviii], the plaintiff who had earlier on accepted a promissory note for part of a debt owed him by the defendant subsequently sued for the balance. The defendant claimed that payment by a promissory note introduced a new element into the contract sufficient enough as consideration for the plaintiff's promise to accept a lesser sum in the discharge of his full obligation to pay the full debt. The court rejected this argument and applied the rule in Pinnel's case[lxxxix].

ISSN 2581 3382

Meanwhile, in the cases of *Sibree v. Tripp*[xc] and *Goddard v. O'Brien*[xci] the court held that payment by use of paper instead of cash constituted a new element sufficient enough as consideration for a promise to accept a lesser sum in the discharge of the debtor's full obligation to pay the full amount of their contractual obligation. – This dialectic or conflict of opposite amounting to the negation of negation represents our *anti-thesis.*

However, the above ridiculous line of reasoning exemplified in the cases above was demolished by Lord Denning in *D & C Builders v. Rees*[xcii] where the plaintiff entered into a contract with Mr. & Mrs. Rees to do renovation and reconstruction works for the Rees for consideration of 480 pounds. Evidence revealed that the plaintiff did perfect work with quality materials. After the completion, the Rees paid £300 via a cheque and refused to pay the balance as soon as the plaintiffs cashed the cheque. The plaintiffs sued for the balance, whilst the defendants took advantage of the above positions brought by the exception in *Pinnel's case*, arguing that payment of a lesser sum by a negotiable instrument represents the introduction of a new element, sufficient enough to absolve them from paying the full amount. Lord Denning dismissed this argument and held the defendant liable to pay the balance of the debt. According to Lord Denning[xciii]:

> *No sensible distinction can be taken between payment of a lesser sum by cash and payment of it by cheque. The cheque, when given, is a conditional payment. When honored, it is actual payment. It is then just the same as cash. If a creditor is not bound when he receives payment by cash, he should not be bound when he receives payment by cheque.*

The above position is the synthesis. Another set of arguments, in form of a *thesis,* started in the case of *Jorden v. Money*[xciv] where *Mr. Money* owned some money to C. When C died, Mrs. Jorden, his sister became entitled to the money. But Mrs. Jorden stated on several occasions that she did not intend to enforce the payment since according to her the indebtedness was incurred under unfair circumstances, a statement that was made in contemplation of marriage with Mr. Money. After the marriage, Mr. Money brought an action in the Court of Chancery for a declaration that the obligation to pay the debt was no longer hanging on him. The action

ISSN 2581 3382

was based on the doctrine of estoppel that the promise made by Mrs. Jorden represented a representation, binding on her when Mr. Money acted on it. The court rejected this argument and held that estoppel was not applicable and Mr. Money was obliged to pay the debt in that estoppel was only applicable to representation of fact and not to a statement of intention.

However, in this same case of *Jorden v. Money*,[xcv] Lord St. Leonards in a very powerful dissenting judgment set in motion the antithesis argument by holding that the doctrine of estoppel applied to the fact of the case and that Mrs. Jorden was barred from recovering the debt. According to him, estoppel is applied to a statement of intention as well as to a statement of facts[xcvi]. Also, in the case of *Foakes v. Beer*[xcvii] where Mrs. Beer made a promise to forgo the interest on a judgment debt owned by Dr. Foakes, the court held that the promise was not binding on her because Dr. Foakes did not furnish any consideration for the promise.

Meanwhile, the dissenting opinion of Lord St. Leonard was adopted in the case of *Hughes v. Metropolitan Railway Co*[xcviii], where a lessor gave a six months' notice to repair or quit to a Lessee, but within the interregnum opened an offer to purchase to the lessee, which lasted two months. An attempt by the Lessor to include or inputs the two months of negotiation with the six months' notice was rebuffed and rejected by the court and According to Lord Cairns L.C who delivered the lead judgment of the court[xcix]:

> *It is the principle upon which all courts of equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results, - certain penalties or legal forfeiture – afterward by their act or with their consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising out of the contract will not be enforced, or will be kept in suspense or held in abeyance, the person who otherwise might have enforced those rights would not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties.*

ISSN 2581 3382

In this dictum, the court provided a remedy in equity to enforce a promise made by a promissor to a promisee, and the doctrine became known as equitable estoppel. This negation of negations of previous positions of the court, the dialectic in the above conflicts of the opposite, represents the antithesis.

Finally, in the famous *High Tree's Case*[c] otherwise known as the case of *Central London Property Trust Ltd v. High Trees House Ltd*[ci] wherein a lease of property for 99 in *Central London* for 99 years, the defendant was to pay an annual rent of 2,500 pounds, but because of the emergence of the 2nd world war which led many occupants to vacate houses in *Central London* and a significant downward trend in the value of the property, the plaintiff reduced the annual rent to £1,250, less 50% until the war abates, an attempt by the plaintiff to renege on this earlier position and to claim arrears of rent of the deducted 50% during the war was rejected by the court, where Lord Denning crafted the principle of promissory estoppel in this rule:

> *Where a promise is made which was intended to create legal relations and which to the knowledge of the person making the promise was going to be acted upon by the person to whom it was made, and which was acted upon, the promissor will be held bound by his promise.*

This epoch-making decision by Lord Denning's christened promissory estoppel stands for our synthesis. Another round of argument in forms of the thesis, antithesis, and synthesis evolved in an attempt to conceptualize the full elements of this doctrine as to whether the doctrine is to be a sword, - an offensive legal weapon - or a shield – a protective legal weapon – where the final synthesis was that it should be employed as a shield, and not a sword – a defensive weapon[cii]. Arguments and contradictions also evolved about whether the defendant should prove detriment and also whether the promissor could withdraw his earlier promise by giving notice. In this respect, one could rank lord Denning, our Nigeria justice Taylor as philosopher justices after the fashion of Descartes. We knew from history that in ancient, war broke out in the Greek City State and the kingdom was divided into three. One-third of the Greek population was led into Egypt by General Ptolemy with ancient manuscripts deposited at the University of Alexandria. In Egypt, the Greek population for the first time met the incurable monotheistic

ISSN 2581 3382

Jews for the first time. The Greek on the one hand believes in their power of reasoning for the attainment of knowledge, whilst the Jews believed in faith in God.

Thus, faith and reason confronted each other. The Greek population amazingly became onlookers for years long and the Greek philosophy was grounded to a halt. It was many years after that Rene Descartes woke up from his dogmatic slumber to begin the re-awakening of what he called modern philosophy. In two of his most important books; The Meditation and The Methodic Doubt, he declared;

> *I will reject the authoritarianism of the Church, I will not believe that anything is true, except it is clear and distinct. I will break away with the past and continue philosophy afresh. Nothing exists, except the consciousness that I who is doing the doubting must exist. I think, therefore, I am. That is the facility of reasoning.*

This is what Descartes referred to as the Method of Cartesian Doubt and the height of humanism indeed. The underlying principle been *Cogito Ergo Sum*, meaning, I think therefore I am. In essence, doing justice involves a clear departure from rigid formalism that could produce injustice. The intervention of equity is necessary to combat any statutory rigidity considered a challenge to the court. To do substantial justice by giving life to a moribund statutory provision is inherent in the interpretation function of the court to do substantial justice. The recognition of this power of checks and balances marked Lord Denning out as one of the most profound judges in history with an innate willingness to relate his philosophical outlook intelligibly intertwined with the law in fulfilment of the demands of justice in pursuit of the common good.

PHILOSOPHICAL ENTERPRISE AND LAW: THE CORRELATION

Philosophers generate ideas. These ideas become the tiny industries of amazing complexities that produce innumerable courses that are now the means of getting to the near- ideal situations in many aspects of life through the synthesis of ideas. Hence, philosophy becomes the several bed spaces on which other discipline lies from science to art, humanities, law, and

ISSN 2581 3382

jurisprudence of law. Law also generates ideas and chart the course to the ideal through the activities of jurists and judges through research work, filling of lacunae in knowledge which the judges might adopt as a treatise for the making of the ideal society. For example, most of the rules in the Law of Tort today, to wit, the rule in Ryland and Fletchers, Occupiers Liability, Liability for Nervous Shock, etc, and many more in other branches of law are lights towards the making of an ideal and better society.

Philosophers could use other knowledge as a horse to ride into the realms of the idea. As noted from the beginning, most of the presocratic philosophers had a good knowledge of Astrology and Cosmogonies of the ancient East which they used through their powers of reasoning, observation, and experience to produce innumerable ideas by which they passed to the pupils under their tutelage. In the same vein, judges, especially and as mundane routine exercise seek expert opinion on the terrains beyond their discipline. By implication, the law has unrestricted and unlimited catchment areas to navigate to profer solutions to complex factual situations or complex cases beyond its immediate terrain. In essence, philosophy thrives from unfamiliar terrain, and law also thrives from analogous and unfamiliar terrains to extend its scope and the field of knowledge.

Philosophers prime beyond the physical to supernatural and spiritual terrains to profer solutions to the societal problem. Law, however, does not prime into the supernatural or spiritual realm to profer solutions to societal problems. Philosopher work beyond the natural to the spiritual realm provides lawyers and judges with the requisite beneficial raw materials in criminal proceedings to realize that certain behavior of men is trigger by uncontrollable forces beyond them. This necessitates and compels judges to pronounce or formulate the principle of diminishing liabilities for certain categories of deviants. For illustrative purposes, the concept of metaphysical determinism. Judges could also call in the opinion of experts when they are operating within a fact not situate within their purview of knowledge. In this case, a judge can call the experts to illuminate unfamiliar terrain, considered foreign to law.

Though Philosophers could prime into the supernatural while seeking solutions to societal problems, Law never operated beyond the physical. Law regulates the activities of men in society by looking inward to the immediate environment within the physical before imposing appropriate fines, penalties, or terms of imprisonment to serve as a deterrent for potential

ISSN 2581 3382

criminals. Philosophers never proscribe punishment for criminals by way of fines or terms of imprisonment. While on theoretical level philosophy stressed on the ideal ways of living, law at the practical level regulate human conduct and formulates rules for cordial relationship by the imposition of duties and corresponding obligations on the citizens. It is, therefore, apparent that whilst philosophy plow, law sows, and preserves the good seeds one put behind bars the bad fruits.

Philosophers work in synergy with law. This is discernible from the fact that there are aspects of philosophical works that aided the law on the measure of liability for deviants. This explains the principle of diminished responsibility and prescription that an infant or a minor does not have enough capacity to form an intention such that when they commits an offense, choice of reformation center became the alternative to imprisonment. Here we considered four philosophical concepts for the consideration of the principle of diminished responsibilities while considering the measure of liabilities to be meted out by the law for deviants. Moshman considered three, first, that the mind of a new child according to Locke is a *tabula rasa* i.e. a blank slate on which experience plays an active role by impressing attitudes on the child as he grows. Second, an alternative to the empirical view of Locke is *nativism* that posits that human genetic heritage inculcates knowledge accumulated over the years in the course of evolution, before the birth of the child. This knowledge is saved within the genes and passed on to the unborn, whilst the child inherits the same and matures into it. Hence, in this view is the thesis that development is a maturation process directed by genes.

The third is constructivism which suggests that the mind plays an active role in its development. This perceives that development is a creative process directed by an active mind itself. The implication is that only an active mind could be productive. Woven these three philosophical theories together boils down to the state that some factors may suspend, annihilate, or overborne certain genuine intention of the man to force him to behave abnormally. These are impressions forced on his mind, the generational behavioural patterns coerced on his mind making his mind is zero-super-construct to generate or ignite noble ideas in him. The fourth relates to what the philosophers called the concept of metaphysical determinism. This is the thesis or philosophical view that all events are determined by a previously existing cause beyond the physical and lying in the realm of the spirit which compels human beings to act in certain ways or otherwise. If this is the case, it implies that criminal acts are ignited by a force

ISSN 2581 3382

that coerces the criminals to act in defiance of the law. To this extent, therefore, some criminologists held the belief and argued that the behavior of a criminal might be caused by forces beyond him.

Interestingly, such philosophical principles help the administrators of justice to realize the need to temper justice with mercy as a way of reducing the sentence on the accused. Astrologers are the bedrock of philosophy itself. And Astrological works have shown us that there is predestination. Nostradamus predicted the killing of President Kennedy and the fate of the Kennedys. Concerning President Kennedy, he predicted that the *President would be killed in the light of the day, the ancient plans committed by a man shooting from the misty wood, an innocent man would be accused of the deed, and an evil foretold by the postulant one.* And it was precise. President Kennedy was warned not to travel to that place. He was pre-warned by the postulant one and the message was even relayed several times to him, yet he went. Alas! He was assassinated and an innocent man later known to be innocent was accused of the shooting. Nostradamus predicts the fall of the Shah of Iran, the enemy of the world who would cause the Great War that would lead to the killing of millions – He called the person Hisler, confusing only letter S, with, T and it was precise. These were predicted in his "*Rhyme Prophesies 1566*". So, it implies that everything had been predestined and we are just moving on the terrain of destiny. Everything manifestations of what had been determined metaphysically. The death of our Lord Jesus was also predicted, but with liability hanging on the neck of Iscariot Judas. Those philosophical works can aid lawyers in the course of their professional service to clients. For example, Clarence Darrow was a renowned criminologist and criminal lawyer in the United States of America.

Clarence Darrow in defense of Nathan Leopold and Richard Loeb, the two wealthy teenagers who pled guilty to the kidnapping and murder of 17year old Bobby Frank used the philosophical theory of metaphysical determinism that convince the judge. It was on August 22, 1924, that Darrow gave his famous twelve hours closing statement that brought tears from the eyes of the presiding judge that saved his clients from the ultimate death penalty. Here we have two excerpts from his Darrow. 1st excerpt runs thus;

> *Your Honour, I am almost ashamed to talk about it. I can hardly imagine that we are in the twentieth century. And yet some men seriously*

ISSN 2581 3382

> *say that for what, for what Nature had done, for what life has done, for what training has done, you should hang these boys. Why did they kill little Bobby Franks? Not for money, not for spite, not for hate. They killed him as they might kill a spider or a fly, for the experience. They killed him because they were made that way. After all, somewhere in the infinite processes that go to the making up of the boy or the man something slipped, and those unfortunate lads sit here hated, despised, outcasts, with the community shouting for blood.*

From the excerpts, one could discover that the writing of the philosophers on *Tabula rasa*, nativism, constructivism, and the concept of metaphysical determinism either knowingly, or unknowingly by Darrow himself, forms the building blocks of his argument. One could distil these from his statement in the first excerpts, *for what nature has done (nativism and metaphysical determinism) for what life has done (nativism and constructivism) for what training has environment done (Tabula rasa)* you should hand these boys). The words in the second excerpt, *they killed him because they were made that way (what was metaphysically determined)* translation to, their acts were not theirs.

CONCLUSION

Philosophy, jurisprudence, and law have many things to share. Today, the law had developed his path to wisdom through the independent subject of philosophy that a judge could navigate to judge rightly under the subject now called Jurisprudence. Such topics are the natural law school, the positivist legal theorist, the Historical school, the Realist school, the sociological school, feminist jurisprudence, the Marxist school, etc. Presently, we have Islamic jurisprudences. As a follow-up to this paper, we are presently exploring the second paper advocating for the eclipse of the culture of violence inherent in the Islamic jurisprudence. In this, we are developing the Christo/Judaism jurisprudence, as a route to self-defence but the

ISSN 2581 3382

overwhelming culture in the philosophy of peace. This paper cannot encapsulate every area, and we suggest that further research need be done by our criminologist on the impacts of metaphysical determinism on criminal liabilities in the complex areas of cybercrime, Acts of insurgents and terrorism along the axis of evil. It should be noted that, throughout the ages, the legal profession's argument is akin to the philosophical enterprise. Whether a court is sitting as a court of the first instance, or exercising appellate jurisdiction, they involve themselves in arguments to support or against their previous decisions. Legal practitioners, lecturers involved in addresses and commentaries more often are involved in one form of dialectic or another and so philosophers are known to be masters of argument.

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ISSN 2581 3382

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ISSN 2581 3382

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[xc] (1721) l. stra 426.
[xci] (1882) Q.B.D p. 37
[xcii] (1966) 2, Q.B p.617, (1965) 2. ALL E.R. p. 837.
[xciii] (1966) 2 QB 617; (1965) 2 All. E.R. 837.
[xciv] *Supra*
[xcv] (1854) 5. H.L.C. 185. IOE.R. p. 868.
[xcvi] *Ibid.*
[xcvii] *Ibid.*
[xcviii] (1884) 9. App. cas 605.
[xcix] (1877) 2 App. cases 439; LT 932. H.L
[c] *Supra.*
[ci] (1947) K.B. 130.
[cii] *Combe v. Combe*, (1951) 1. ALL E.R. p. 767.

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