

A Jurisprudential X-Ray of the Influence of Natural Law Theory on Human Rights Adjudication in Nigeria (2000–2024)

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Abstract: *This article investigates the influence of natural law theory on human-rights adjudication in Nigeria from 2000 to 2024. The central concern of the study is that, while Nigerian law is formally structured around constitutional supremacy, statutory validity, and other positivist foundations, judicial decisions in fundamental-rights cases often reveal reliance on broader moral considerations such as justice, dignity, fairness, and the common good. The study therefore interrogates the extent to which natural law theory, whether expressly acknowledged or implicitly applied, continues to shape the adjudicatory approach of Nigerian courts in the protection and enforcement of human rights. The study employs doctrinal legal research methodology. It draws on primary legal materials such as the Constitution of the Federal Republic of Nigeria 1999 (as amended), the African Charter on Human and Peoples' Rights, the Fundamental Rights (Enforcement Procedure) Rules 2009, and relevant judicial decisions, as well as secondary materials including textbooks, journal articles, and scholarly writings in jurisprudence, constitutional law, and human-rights law. The theoretical framework of the study is principally rooted in natural law theory, supported by legal positivism and legal realism as complementary perspectives. The study reveals that Nigerian human-rights adjudication is not merely an exercise in formal legal application, but also a process substantially informed by moral and purposive reasoning. It shows that courts, especially in rights-based litigation, often interpret legal norms in a manner that advances substantive justice and preserves the dignity of the human person. In this regard, natural-law values remain influential, even where judicial reasoning is formally expressed in constitutional or statutory terms. At the same time, positivism explains the institutional and formal structure of the legal system, while realism clarifies the practical role of judicial discretion and social context in adjudication. The study concludes that natural law theory retains enduring relevance in Nigerian human-rights jurisprudence and that its influence is most visible in judicial efforts to interpret and enforce rights in a way that promotes justice rather than mere formal legality. The research recommends a sustained commitment to purposive and rights-oriented adjudication, as well as deeper scholarly engagement with the relationship between jurisprudential theory and judicial practice in Nigeria.*

Keywords: Natural Law Theory, Human Rights, Adjudication and the Nigerian Legal System

INTRODUCTION

The relationship between law and morality has remained one of the most enduring debates in legal philosophy. At the centre of this debate lies Natural Law Theory, which maintains that law derives its legitimacy not merely from sovereign command or formal enactment, but from its conformity with moral principles rooted in human reason, justice and inherent human dignity. From the classical writings of Aristotle and Cicero, through the medieval synthesis of

Thomas Aquinas, to modern exponents such as John Finnis and Ronald Dworkin, natural law theory has consistently asserted that unjust laws lack true moral authority and, in a deeper sense, may fail to deserve the full status of law.¹ Natural law theory traces its intellectual origins to classical Greek philosophy. Aristotle conceived law as an instrument of justice directed toward the common good and grounded in reason rather than mere coercive power.² Roman thinkers, especially Cicero, further developed the idea of a universal law of nature binding on all humanity irrespective of political boundaries or local enactments.³ During the medieval period, Thomas Aquinas systematised natural law by arguing that human law derives its legitimacy from eternal and natural law, and that laws inconsistent with moral reason are perversions of law rather than proper laws.⁴ In the modern era, natural law theory was subjected to critique but also experienced revival and reformulation. While positivist scholars such as John Austin rejected moral content as a criterion of legal validity, contemporary natural-law theorists such as John Finnis reformulated the theory in terms of basic human goods, practical reasonableness and justice.⁵ This modern articulation has had significant influence on constitutional interpretation and the development of human-rights discourse across jurisdictions. The philosophical foundations of modern human rights are deeply rooted in natural law theory. The idea that every human being possesses inherent and inalienable rights by virtue of being human reflects a distinctly natural-law understanding of the person and the State. Instruments such as the Universal Declaration of Human Rights embody this conception by affirming dignity and equality as inherent attributes of the human person.⁶ Natural law provided the normative basis for limiting state power and protecting individuals against arbitrary authority.⁷ It shaped constitutional developments in Europe, the Americas and later post-colonial states, where rights came to be entrenched as higher norms superior to ordinary legislation. Human-rights adjudication therefore often involves moral reasoning, proportionality and justice-oriented interpretation, all of which bear the marks of natural-law thinking. The rise of constitutionalism marked a decisive transition from parliamentary or sovereign supremacy to the supremacy of fundamental norms. Written constitutions containing bills of rights empowered courts to invalidate legislation and executive conduct inconsistent with entrenched rights. This development transformed adjudication from the mechanical

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¹ J Finnis, *Natural Law and Natural Rights* (2nd edn, Oxford University Press 2011); Ronald Dworkin, *Taking Rights Seriously* (Duckworth 1977).

² Aristotle, *Nicomachean Ethics* (WD Ross tr).

³ Cicero, *De Legibus*

⁴ T Aquinas, *Summa Theologiae* (Blackfriars edn, Cambridge University Press 1964–1981).

⁵ J Austin, *The Province of Jurisprudence Determined* (John Murray 1832); John Finnis, *Natural Law and Natural Rights* (2nd edn, Oxford University Press 2011).

⁶ Universal Declaration of Human Rights 1948.

⁷ D O N Agwor, 'The Rule of Law: A Conceptual Necessity for the Sustainability of Democracy and Good Governance in Nigeria' (2021) 9(3) *International Journal of Innovative Legal & Political Studies* 21

application of rules into a more principled enterprise guided by values such as dignity, equality and justice.⁸ Judicial review thus became an arena in which legal positivism alone often proved inadequate. Courts increasingly relied on purposive interpretation, balancing and moral reasoning to resolve rights disputes. These methods resonate strongly with natural law, which insists that law should be evaluated in light of justice and the common good. Nigeria's return to democratic governance in 1999 marked a significant constitutional rebirth. The Constitution of the Federal Republic of Nigeria 1999 (as amended) entrenched a comprehensive catalogue of fundamental rights under Chapter IV and made them enforceable against all authorities and persons.⁹ The post-1999 period has witnessed a considerable expansion of human-rights litigation, aided by judicial activism and by the adoption of the Fundamental Rights (Enforcement Procedure) Rules 2009, which promote access to justice, liberal interpretation and the advancement of human rights. This democratic period therefore provides an especially fertile context for examining the philosophical assumptions underlying judicial reasoning in rights adjudication. Nigerian courts, particularly the Supreme Court and the Court of Appeal, have developed a substantial body of human-rights jurisprudence. In interpreting fundamental-rights provisions, they have often adopted broad and purposive approaches rather than narrow literalism. Judicial decisions emphasising human dignity, fairness, equity and substantive justice suggest that courts frequently rely, at least implicitly, on moral reasoning beyond strict textual interpretation.¹⁰ Thus, although the Nigerian legal system is formally grounded in legal positivism, actual judicial practice reveals a more nuanced approach in which moral considerations often shape outcomes, especially in fundamental-rights cases. The adjudication of human rights inevitably raises moral questions concerning the proper limits of state power, the protection of individual autonomy and the meaning of justice in constitutional governance. Natural law theory provides a framework for addressing such questions by grounding legal interpretation in reason, justice and the dignity of the human person. The growing relevance of moral reasoning in Nigerian judicial decisions therefore raises the central inquiry of this study: whether, and to what extent, natural law theory has influenced human-rights adjudication in Nigeria between 2000 and 2024.

Conceptual Clarifications

Law

The concept of law has long been the subject of deep scholarly debate. Classical understandings of law tended to emphasise its moral content, whereas modern theories often focus on its formal or institutional characteristics.¹¹ Aristotle conceived law as an ordinance of reason directed toward the common good.¹² This moral conception influenced later writers, especially those within the natural-law tradition.¹³ By contrast, legal positivists define law primarily in terms of

⁸ R Dworkin, *Taking Rights Seriously* (Duckworth 1977).

⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended) Chapter IV

¹⁰ *Ransome-Kuti v Attorney-General of the Federation* (1985) 2 NWLR (Pt 6) 211 (SC).

¹¹ C C Wigwe, *Jurisprudence and Legal Theory* (2nd edn, Princeton & Associate Publishing Co Ltd 2024); HLA Hart, *The Concept of Law* (2nd edn, Oxford University Press 1994); Lloyd's Introduction to Jurisprudence (Sweet & Maxwell).

¹² Aristotle, *Politics*.

¹³ T Aquinas, *Summa Theologiae* (Blackfriars edn, Cambridge University Press 1964–1981); John Finnis, *Natural Law and Natural Rights* (2nd edn, Oxford University Press 2011); Chris C Wigwe, *Jurisprudence and Legal Theory* (2nd edn, Princeton & Associate Publishing Co Ltd 2024).

validity and authority. John Austin famously described law as the command of a sovereign backed by sanctions.¹⁴ This approach sharply separated law from morality and emphasised obedience rather than justice.¹⁵ HLA Hart later refined positivism by presenting law as a system of primary and secondary rules, held together by an ultimate rule of recognition.¹⁶ In the Nigerian context, law is generally understood as comprising the Constitution, statutes, judicial decisions, customary law and received English law. The supremacy of the Constitution is entrenched in section 1(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).¹⁷ Yet judicial practice demonstrates that law, especially in the field of fundamental rights, cannot in reality be wholly divorced from moral and social considerations.¹⁸

Natural Law

Natural law refers to a body of principles believed to be inherent in human nature and discoverable through reason.¹⁹ Natural-law theorists maintain that such principles provide moral standards against which positive law ought to be measured.²⁰ Aquinas famously expressed this idea in the proposition that an unjust law is not law at all (*lex iniusta non est lex*).²¹ Modern natural-law theorists such as John Finnis have reformulated natural law in more secular terms by grounding it in basic human goods such as life, knowledge, play, friendship, religion and practical reasonableness.²² In this way, natural law provides an important normative foundation for both human rights and constitutional interpretation.²³

In the Nigerian setting, courts often invoke fairness, dignity and justice when interpreting fundamental-rights provisions, thereby reflecting ideas closely associated with natural-law thought.²⁴

¹⁴ J Austin, *The Province of Jurisprudence Determined* (John Murray 1832).

¹⁵ J Austin, *The Province of Jurisprudence Determined* (John Murray 1832); HLA Hart, *The Concept of Law* (2nd edn, Oxford University Press 1994); Chris C Wigwe, *Jurisprudence and Legal Theory* (2nd edn, Princeton & Associate Publishing Co Ltd 2024).

¹⁶ HLA Hart, *The Concept of Law* (2nd edn, Oxford University Press 1994).

¹⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 1(1).

¹⁸ C C Wigwe, *Jurisprudence and Legal Theory* (2nd edn, Princeton & Associate Publishing Co Ltd 2024); Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press 1977); *Rabiu v Kano State* (1980) 8–11 SC 130; *Attorney-General of the Federation v Ransome-Kuti* (1985) 2 NWLR (Pt 6) 211.

¹⁹ T Aquinas, *Summa Theologiae* (Blackfriars edn, Cambridge University Press 1964–1981); John Finnis, *Natural Law and Natural Rights* (2nd edn, Oxford University Press 2011); Chris C Wigwe, *Jurisprudence and Legal Theory* (2nd edn, Princeton & Associate Publishing Co Ltd 2024).

²⁰ T Aquinas, *Summa Theologiae* (Blackfriars edn, Cambridge University Press 1964–1981); John Finnis, *Natural Law and Natural Rights* (2nd edn, Oxford University Press 2011); Chris C Wigwe, *Jurisprudence and Legal Theory* (2nd edn, Princeton & Associate Publishing Co Ltd 2024).

²¹ T Aquinas, *Summa Theologiae* (Blackfriars edn, Cambridge University Press 1964–1981).

²² J Finnis, *Natural Law and Natural Rights* (2nd edn, Oxford University Press 2011).

²³ J Finnis, *Natural Law and Natural Rights* (2nd edn, Oxford University Press 2011); Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press 1977); Jack Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013); Chris C Wigwe, *Jurisprudence and Legal Theory* (2nd edn, Princeton & Associate Publishing Co Ltd 2024).

²⁴ C C Wigwe, *Jurisprudence and Legal Theory* (2nd edn, Princeton & Associate Publishing Co Ltd 2024); Epiphany Azinge (ed), *Judicial Activism in Nigeria* (Nigerian Institute of Advanced Legal Studies 2011); *Rabiu v Kano State* (1980) 8–11 SC 130; *Attorney-General of the Federation v Ransome-Kuti* (1985) 2 NWLR (Pt 6) 211.

Positive Law

Positive law refers to law that is formally enacted by a recognised authority and enforced through institutional mechanisms.²⁵ Legal positivism insists on a distinction between law as it is and law as it ought to be.²⁶ Austin's command theory and Hart's rule-based theory both exemplify this orientation. Nigeria's constitutional order is predominantly positivist in structure.²⁷ Courts are formally bound by the text of the Constitution and by statutes duly enacted by the legislature.²⁸ Section 1(3) of the 1999 Constitution renders void any law inconsistent with the Constitution. This structure promotes certainty and predictability, but it may prove inadequate where strict literal interpretation leads to injustice, particularly in human-rights disputes.²⁹

Legal Realism

Legal realism emerged as a critique of both formal natural-law reasoning and strict legal positivism.³⁰ Realists argue that judicial decisions are influenced not only by legal rules but also by social, political and psychological considerations.³¹ Oliver Wendell Holmes Jr's famous statement that "the life of the law has not been logic; it has been experience" expresses this realist insight.³² Jerome Frank further argued that judicial discretion, personal values and social context significantly shape adjudication.³³ Legal realism is therefore especially useful in explaining how judges apply moral reasoning in practice even within formally positivist systems.³⁴ In Nigeria, realist insights help explain why courts sometimes depart from strict textualism in order to achieve substantive justice in fundamental-rights cases.³⁵

²⁵ J Austin, *The Province of Jurisprudence Determined* (John Murray 1832); HLA Hart, *The Concept of Law* (2nd edn, Oxford University Press 1994); Hans Kelsen, *Pure Theory of Law* (University of California Press 1967); Chris C Wigwe, *Jurisprudence and Legal Theory* (2nd edn, Princeton & Associate Publishing Co Ltd 2024).

²⁶ HLA Hart, *The Concept of Law* (2nd edn, Oxford University Press 1994); Hans Kelsen, *Pure Theory of Law* (University of California Press 1967); Chris C Wigwe, *Jurisprudence and Legal Theory* (2nd edn, Princeton & Associate Publishing Co Ltd 2024).

²⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 1(1), 1(3), 6; BO Nwabueze, *Constitutional Democracy in Africa* vol 1 (Spectrum Books 2003); Chris C Wigwe, *Jurisprudence and Legal Theory* (2nd edn, Princeton & Associate Publishing Co Ltd 2024).

²⁸ Constitution of the Federal Republic of Nigeria 1999 (As Amended) s 1(3).

²⁹ HLA Hart, *The Concept of Law* (2nd edn, Oxford University Press 1994); Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press 1977); Robert Alexy, *A Theory of Constitutional Rights* (Julian Rivers tr, Oxford University Press 2002); *Rabiu v Kano State* (1980) 8–11 SC 130.

³⁰ O Wendell Holmes Jr, 'The Path of the Law' (1897) 10 *Harvard Law Review* 457; Jerome Frank, *Law and the Modern Mind* (Brentano 1930); Chris C Wigwe, *Jurisprudence and Legal Theory* (2nd edn, Princeton & Associate Publishing Co Ltd 2024).

³¹ O Wendell Holmes Jr, 'The Path of the Law' (1897) 10 *Harvard Law Review* 457; Jerome Frank, *Law and the Modern Mind* (Brentano 1930); Chris C Wigwe, *Jurisprudence and Legal Theory* (2nd edn, Princeton & Associate Publishing Co Ltd 2024).

³² O Wendell Holmes Jr, *The Path of the Law* (1897) 10 *Harvard Law Review* 457.

³³ J Frank, *Law and the Modern Mind* (Brentano 1930).

³⁴ J Frank, *Law and the Modern Mind* (Brentano 1930); Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press 1977); Chris C Wigwe, *Jurisprudence and Legal Theory* (2nd edn, Princeton & Associate Publishing Co Ltd 2024).

³⁵ E Okere, 'Judicial Law Making and Judicial Idiosyncrasies' (2023) *Journal of Law and Policy*; Epiphany Azinge (ed), *Judicial Activism in Nigeria* (Nigerian Institute of Advanced Legal Studies 2011); *Rabiu v Kano State* (1980) 8–11 SC 130; *Fawehinmi v Abacha* (2000) 6 NWLR (Pt 660) 228.

Human Rights

Human rights are fundamental entitlements inherent in all human beings by virtue of their humanity.³⁶ They are generally regarded as universal, inalienable and indivisible.³⁷ Their philosophical foundation is closely linked to natural law, which recognises the inherent dignity and worth of the human person.³⁸ The universality of human rights has also been defended in recent religious and comparative scholarship. Thompson and Bankole-Thompson argue that the language of human rights may be meaningfully grounded in both Islamic and Judeo-Christian traditions, thereby challenging the claim that modern rights discourse is exclusively Western in origin.³⁹ This is significant to the present study because it reinforces the natural-law proposition that certain rights derive from the inherent worth of the human person and may be recognised across different moral, cultural and religious traditions.⁴⁰ In Nigeria, human rights are constitutionally guaranteed under Chapter IV of the 1999 Constitution (as amended). These include the rights to life, dignity of the human person, personal liberty, fair hearing, freedom of expression and freedom from discrimination.⁴¹ International instruments such as the Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights 1966 further reinforce these rights.⁴²

Human Rights Adjudication

Human-rights adjudication refers to the judicial process through which courts interpret, apply and enforce human-rights norms.⁴³ It requires courts to balance individual rights against competing public interests and often involves purposive and value-based interpretation.⁴⁴ The adoption of the Fundamental Rights (Enforcement Procedure) Rules 2009 marked a major development in Nigerian human-rights adjudication by directing courts to advance and realise

³⁶ J Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013); Universal Declaration of Human Rights 1948, Preamble and arts 1–2; Henry J Steiner, Philip Alston and Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals* (3rd edn, Oxford University Press 2007).

³⁷ Universal Declaration of Human Rights 1948; Vienna Declaration and Programme of Action 1993, para 5; Jack Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013).

³⁸ J Finnis, *Natural Law and Natural Rights* (2nd edn, Oxford University Press 2011); Thomas Aquinas, *Summa Theologiae* (Blackfriars edn, Cambridge University Press 1964–1981); Chris C Wigwe, *Jurisprudence and Legal Theory* (2nd edn, Princeton & Associate Publishing Co Ltd 2024); Jack Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013).

³⁹ DC Dasaki Thompson and DR Bankole ‘Thompson, In Search of Universality: *Human Rights Language in Islam* (2025) 2(1) *Rapid Journals International*; DC Dasaki Thompson, In Search of Universality: *Concept of Human Rights in Judeo-Christian Religious Tradition* (2025) 2(1) *Rapid Journals International*.

⁴⁰ DC Dasaki Thompson and DR Bankole-Thompson, ‘In Search of Universality: Human Rights Language in Islam’ (2025) 2(1) *Rapid Journals International*; DC Dasaki Thompson, ‘In Search of Universality: Concept of Human Rights in Judeo-Christian Religious Tradition’ (2025) 2(1) *Rapid Journals International*; Jack Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013). One of those Thompson articles is publicly visible online, which supports treating it as an active source rather than a placeholder. ([rapidjournals.com][1])

⁴¹ Constitution of the Federal Republic of Nigeria 1999 (as amended) ch IV.

⁴² Universal Declaration of Human Rights 1948; International Covenant on Civil and Political Rights 1966; African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004.

⁴³ Fundamental Rights (Enforcement Procedure) Rules 2009; Robert Alexy, *A Theory of Constitutional Rights* (Julian Rivers tr, Oxford University Press 2002); David M Beatty, *The Ultimate Rule of Law* (Oxford University Press 2004).

⁴⁴ R Alexy, *A Theory of Constitutional Rights* (Julian Rivers tr, Oxford University Press 2002); David M Beatty, *The Ultimate Rule of Law* (Oxford University Press 2004); *Rabiu v Kano State* (1980) 8–11 SC 130.

the rights contained in the Constitution and in relevant international human-rights instruments.⁴⁵

Overview of Human Rights Adjudication in Nigeria

Human rights adjudication in Nigeria during the Fourth Republic has been marked by a gradual but discernible movement from rigid formalism towards a more value-laden judicial method. Since the coming into force of the Constitution of the Federal Republic of Nigeria 1999 (as amended), with its catalogue of fundamental rights in Chapter IV and the enforcement jurisdiction conferred on the High Courts by section 46, Nigerian courts have repeatedly been called upon to determine the scope and content of individual rights in a setting characterised by political transition, institutional fragility and persistent rights violations.⁴⁶ Formally, the Nigerian legal order remains positivist. The Constitution is the supreme law;⁴⁷ legislation is the principal source of binding norms; treaties are not self-executing and require domestication under section 12;⁴⁸ and courts are institutionally bound to apply enacted law. Yet a close examination of decisions of the Supreme Court, Court of Appeal and superior trial courts between 2000 and 2024 shows that judges do not simply apply legal texts mechanically. Rather, they frequently resort to moral reasoning, proportionality analysis and purposive interpretation, especially in cases involving human dignity, personal autonomy, equality and fair trial. This paper argues that Nigerian human-rights adjudication within the period under review is best understood as a hybrid jurisprudence shaped by three overlapping traditions. First, legal positivism supplies the formal structure of the system through the Constitution, statutes, procedural rules and doctrines of precedent and jurisdiction. Secondly, natural law provides the normative direction through appeals to justice, dignity, fairness and inherent rights. Thirdly, legal realism explains the actual patterns of judicial behaviour by showing how social context, institutional limitations and political pressures influence judicial outcomes. The paper therefore proceeds by examining the relevant jurisprudential frameworks, constitutional interpretation and judicial activism, concrete manifestations of natural-law-type reasoning in Nigerian case law, the constraining role of positivist doctrine, the explanatory value of realism, and comparative lessons from other jurisdictions.

Jurisprudential Fusion: Natural Law, Positivism, Realism and Interpretivism

Classical and Modern Natural Law

Classical natural law, associated with thinkers such as Thomas Aquinas and, in the political sphere, John Locke, holds that law is ultimately grounded in objective moral principles discoverable by reason.⁴⁹ On this view, positive law derives its authority from conformity to a higher law, and unjust laws are properly regarded as perversions of law rather than genuine

⁴⁵Fundamental Rights (Enforcement Procedure) Rules 2009, Preamble; *Centre for Oil Pollution Watch v NNPC* (2019) 5 NWLR (Pt 1666) 518; *Fawehinmi v Abacha* (2000) 6 NWLR (Pt 660) 228.

⁴⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 33–46.

⁴⁷ *Ibid* s 1(1).

⁴⁸ *Ibid* s 12.

⁴⁹ T Aquinas, *Summa Theologiae* I–II, qq 90–94; John Locke, *Two Treatises of Government* (Peter Laslett ed, Cambridge University Press 1988) 269–302.

law.⁵⁰ The idea of natural or inalienable rights, namely, rights that belong to human beings by virtue of their humanity and not by the grace of the State, is rooted in this tradition. Modern natural-law theorists such as John Finnis recast the theory in terms of basic human goods and the requirements of practical reasonableness in constructing just institutions.⁵¹ For Finnis, the legitimacy of legal systems depends in part on the extent to which they facilitate human flourishing. Lon Fuller, in a related but distinct manner, defended what he called the “inner morality of law”, a set of procedural virtues such as generality, publicity, prospectivity, clarity and consistency, without which law fails in its essential function of guiding conduct.⁵² In Nigerian human-rights adjudication, such natural-law ideas appear in repeated judicial insistence that certain rights precede the State and stand above ordinary legislation. In *Ransome-Kuti v Attorney-General of the Federation*, the Supreme Court described fundamental rights as rights that “stand above the ordinary laws of the land” and are “antecedent to the political society itself.”⁵³ Although that decision predates 1999, its reasoning has repeatedly informed post-1999 human-rights jurisprudence.

Legal Positivism

Legal positivism, associated with John Austin, HLA Hart and Hans Kelsen, insists that the existence and content of law depend on social facts such as enactment by recognised authority, not on moral merit.⁵⁴ Hart’s theory is particularly relevant because it explains legal validity through a rule of recognition internal to a legal system. In Nigeria, that rule of recognition is anchored in the supremacy of the Constitution, the legislative power of the National Assembly and State Houses of Assembly, and the judicial authority of the courts under the Constitution. Nigeria’s dualist approach to international law exemplifies this positivist orientation. In *Abacha v Fawehinmi*,⁵⁵ the Supreme Court held that treaties do not become enforceable domestically by mere executive ratification, but only through enactment by the National Assembly. Thus, the African Charter on Human and Peoples’ Rights is enforceable in Nigeria because it was domesticated by statute, not merely because of its moral force.⁵⁶ Nonetheless, the importance of positivism in structuring the legal system does not prevent judges from interpreting positive law in ways guided by justice, dignity and substantive fairness.

Legal Realism

Legal realism, especially in the American tradition, insists that judicial decisions cannot be fully explained by formal legal rules alone. Oliver Wendell Holmes Jr’s famous observation that “the life of the law has not been logic; it has been experience” captures this position.⁵⁷ Realists emphasise the influence of social context, institutional pressures, judicial temperament and policy considerations on decision-making. In the Nigerian context, realism helps explain why courts in the 2000s and 2010s became more assertive in cases involving police abuse,

⁵⁰ Aquinas (n4) q 95 art 2.

⁵¹ John Finnis, *Natural Law and Natural Rights* (2nd edn, OUP 2011) 85–90.

⁵² L L Fuller, *The Morality of Law* (rev edn, Yale University Press 1969) 39–41.

⁵³ *Ransome-Kuti v Attorney-General of the Federation* (1985) 2 NWLR (Pt 6) 211 (SC) 230–231.

⁵⁴ HLA Hart, *The Concept of Law* (2nd edn, OUP 1994) 97–107; John Austin, *The Province of Jurisprudence Determined* (John Murray 1832) 9–33.

⁵⁵ *Abacha v Fawehinmi* (2000) 6 NWLR (Pt 660) 228 (SC).

⁵⁶ African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004

⁵⁷ O Wendell Holmes Jr, ‘The Path of the Law’ (1897) 10 *Harvard Law Review* 457, 469.

executive excess and political accountability. Cases such as *Inspector-General of Police v All Nigeria Peoples Party (ANPP)*,⁵⁸ *Fawehinmi v Inspector-General of Police*,⁵⁹ and *Odafe v Attorney-General of the Federation*⁶⁰ may therefore be understood not only as doctrinal developments, but also as judicial responses to a political environment marked by systemic abuse of power and increasing civil-society pressure for accountability. This realist strand is reinforced by Nigerian scholarship. Okere's work on judicial law making and judicial idiosyncrasies draws attention to the inevitability of judicial discretion and the extent to which personal and institutional factors shape adjudication.⁶¹ Read together with the case law examined in this chapter, such scholarship supports the argument that Nigerian human-rights adjudication in the Fourth Republic cannot be explained solely by reference to formal sources of law. It must also account for the values and choices of judges in concrete cases.

Interpretivism and Rights-Based Adjudication

Ronald Dworkin's interpretivism provides an important bridge between positivism and natural law. He argued that law is not exhausted by explicit rules, but also includes principles that judges must interpret in their morally best light.⁶² In hard cases, judges should ask which interpretation of legal practice best fits and justifies the community's legal history in terms of rights, dignity and equality. Although Dworkin is rarely cited expressly by Nigerian courts, his method is visible in decisions where judges invoke the spirit of the Constitution, the dignity of the human person, or broader standards of civilisation and fairness as interpretive guides.⁶³ The interaction of natural law, positivism, realism and interpretivism therefore forms the theoretical matrix within which Nigerian human-rights adjudication between 2000 and 2024 should be understood.

Constitutional Interpretation and Judicial Activism

Purposive and Holistic Interpretation

The interpretive stance of the Nigerian appellate courts has been decisive in shaping rights protection. The Supreme Court has repeatedly held that constitutional provisions, especially those in Chapter IV, should be given a broad, liberal and purposive interpretation. In *Attorney-General of Abia State v Attorney-General of the Federation*, the Court stated that the Constitution is a living document that must be interpreted liberally and as a whole in order to give effect to its purposes.⁶⁴ Similarly, in *Attorney-General of Bendel State v Attorney-General of the Federation*, the Court emphasised that technical rules of statutory interpretation should not be mechanically applied to constitutional provisions.⁶⁵ Post-1999 decisions have built on this method. In *Attorney-General of Lagos State v Attorney-General of the Federation*, the Supreme Court construed fiscal and federalism provisions purposively in order to protect state

⁵⁸ *Inspector-General of Police v All Nigeria Peoples Party (ANPP)* (2007) 18 NWLR (Pt 1066) 457 (CA).

⁵⁹ *Fawehinmi v Inspector-General of Police* (2002) 7 NWLR (Pt 767) 606 (SC).

⁶⁰ *Odafe & Ors v Attorney-General of the Federation & Ors* (2004) AHRLR 205 (NgHC 2004).

⁶¹ O Eberechi, 'Judicial Law Making and Judicial Idiosyncrasies' (2023) *Journal of Law and Policy*.

⁶² R Dworkin, *Taking Rights Seriously* (Duckworth 1977) 81–130.

⁶³ See eg *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo* (2001) 7 NWLR (Pt 711) 206 (SC) 250–252.

⁶⁴ *Attorney-General of Abia State v Attorney-General of the Federation* (2002) 6 NWLR (Pt 763) 264 (SC).

⁶⁵ *Attorney-General of Bendel State v Attorney-General of the Federation* (1981) 10 SC 1.

autonomy in issues of revenue allocation and taxation.⁶⁶ In human-rights adjudication, this purposive approach has translated into a general presumption in favour of rights enjoyment. In *Uzoukwu v Ezeonu II*, the Court of Appeal stressed that fundamental-rights provisions deserve expansive rather than narrow interpretation.⁶⁷ Although the case predates the Fourth Republic, the dictum has repeatedly influenced later rights decisions.

Judicial Activism and Constitutional Morality

The liberal interpretive method has often been described as judicial activism, particularly where courts invalidate executive or legislative measures on rights grounds. In *Abacha v Fawehinmi*, the Supreme Court held that the domesticated African Charter formed part of Nigerian law and could be invoked to challenge acts of government, even within the context of military decrees.⁶⁸ This was a significant assertion of the supremacy of rights-oriented legal norms in a transitional constitutional context. In *Inspector-General of Police v ANPP*, the Court of Appeal invalidated the long-standing practice of requiring police permits for public assemblies, holding that such a requirement had no constitutional basis and violated freedoms of assembly and expression under sections 39 and 40 of the Constitution.⁶⁹ The Court made clear that the duty of the police is to protect demonstrators, not to license protest. Likewise, in *Fawehinmi v Inspector-General of Police*, the Supreme Court held that the police could be compelled by mandamus to investigate alleged crimes by high-ranking public officials.⁷⁰ The Court thereby reaffirmed the principle that no one is above the law. These cases show that judicial activism in Nigeria has often been tied, not to arbitrariness, but to a deeper constitutional morality grounded in liberty, accountability and dignity.

Manifestations of Natural Law Reasoning in Nigerian Case Law

Dignity, Autonomy and Conscience

One of the clearest manifestations of natural-law-style reasoning in Nigerian adjudication is the centrality accorded to human dignity and autonomy. In *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo*, the Supreme Court considered whether a Jehovah's Witness could refuse blood transfusion on religious grounds.⁷¹ The Court upheld the right of a competent adult to refuse treatment, grounding the decision in privacy, dignity and freedom of thought, conscience and religion. The significance of the decision lies in the fact that the Court did not confine itself to a narrow textual reading. Rather, it articulated a broader philosophy of autonomy, holding that the right to privacy includes the right to protect one's conscience and religious belief and to practise same, subject only to constitutional limits.⁷² This resonates strongly with natural-law thought, which treats the individual as a moral agent rather than a mere object of state control. In *Esabunor v Faweya*, however, the Supreme Court was faced with a more difficult question where parents refused blood transfusion for their child on religious grounds.⁷³ The Court held that the State could intervene to protect the life and health

⁶⁶ *Attorney-General of Lagos State v Attorney-General of the Federation* (2014) 9 NWLR (Pt 1412) 217 (SC).

⁶⁷ *Uzoukwu v Ezeonu II* (1991) 6 NWLR (Pt 200) 708 (CA) 761.

⁶⁸ *Abacha v Fawehinmi* (n 10).

⁶⁹ *Inspector-General of Police v ANPP* (n 13).

⁷⁰ *Fawehinmi v Inspector-General of Police* (n 14).

⁷¹ *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo* (n18) 246.

⁷² *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo* (n18) 250.

⁷³ *Esabunor v Faweya* (2019) LPELR-46961 (SC).

of the child. In doing so, it balanced parental autonomy against the child's right to life and dignity. That balancing process itself is characteristic of natural-law reasoning, since it involves weighing competing fundamental goods rather than merely applying rigid legal text.

Equality, Customary Law and the Dignity of Women

Nigerian courts have also invoked dignity and equality to invalidate discriminatory customary practices. In *Mojekwu v Mojekwu*, the Court of Appeal struck down the *Oli-ekpe* custom which denied daughters the right to inherit from their father's estate, describing it as repugnant to natural justice, equity and good conscience.⁷⁴ Although the Supreme Court later cautioned against some of the sweeping language used by the Court of Appeal, it did not reverse the substantive rejection of discriminatory custom.⁷⁵ In *Ukeje v Ukeje*, the Supreme Court held unequivocally that the Igbo customary law disentitling female children from inheriting from their father's estate is discriminatory and void for inconsistency with section 42 of the Constitution.⁷⁶ In this way, the Court constitutionalised an equality principle deeply consistent with natural-law ideas of equal human worth. This line of reasoning is supported by wider African scholarship showing that formal legal equality is often undermined by patriarchal customary structures unless courts actively enforce dignity-based standards.⁷⁷ Thus, in striking down discriminatory customs, Nigerian courts have not merely applied text; they have also affirmed a deeper moral commitment to equality embodied in the Constitution, the African Charter and CEDAW.

Socio-Economic Rights, Environmental Justice and the Right to Life

Although Chapter IV of the Constitution is mainly framed in civil and political terms, Nigerian courts and regional bodies have sometimes interpreted the rights to life and dignity expansively to include socio-economic and environmental dimensions. In *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria*, the African Commission held that Nigeria violated rights relating to health, housing, food and a satisfactory environment in relation to the Ogoni people.⁷⁸ The Commission emphasised the State's duty to prevent and remedy environmental degradation caused by oil operations. Domestically, in *Gbemre v Shell Petroleum Development Company Nigeria Ltd*, the Federal High Court held that gas flaring violated the applicants' rights to life and dignity under sections 33 and 34 of the Constitution and Articles 4, 16 and 24 of the African Charter.⁷⁹ Although enforcement challenges remain, the decision reflects an attempt to understand the right to life as including access to a healthy and dignified environment. Similarly, in *Odafe v Attorney-General of the Federation*, the Federal High Court held that the prolonged detention of HIV-positive prisoners in degrading conditions violated their rights to dignity and health.⁸⁰ Together, these decisions reveal an

⁷⁴ *Mojekwu v Mojekwu* (1997) 7 NWLR (Pt 512) 283 (CA).

⁷⁵ *Mojekwu v Iwuchukwu* (2004) 11 NWLR (Pt 883) 196 (SC).

⁷⁶ *Ukeje v Ukeje* (2014) 11 NWLR (Pt 1418) 384 (SC).

⁷⁷ B Adebisi Raji and Grace Ogonda Akolokwu, 'Discriminatory Customary Practices Against Women's Rights: An Account of Intervention Strategies by Southern African Developing States' (2019) 27(1) *IIUM Law Journal* 89–120.

⁷⁸ *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001).

⁷⁹ *Gbemre v Shell Petroleum Development Company Nigeria Ltd* (2005) AHRLR 151 (NgHC 2005).

⁸⁰ *Odafe v Attorney-General of the Federation* (n 15).

emerging natural-law-inflected understanding of rights as embracing the basic conditions necessary for a dignified human existence.

Criminal Justice and Fair Trial

In criminal justice, courts have increasingly subjected law-enforcement conduct to rights-based scrutiny. In *Abdullahi v Federal Republic of Nigeria*, the Court of Appeal held that torture and coerced confessions are inadmissible and violate constitutional guarantees as well as the African Charter.⁸¹ The Anti-Torture Act 2017 further reflects a normative commitment to the protection of human dignity even in the face of serious criminality.⁸² The courts' insistence that remand orders comply with statutory safeguards under the Administration of Criminal Justice Act and that detainees be arraigned within reasonable time reflects the same orientation.⁸³ These developments show an increasing judicial willingness to read criminal procedure in the light of fairness, dignity and liberty. This point is reinforced by Nigerian scholarship. Nnorom's analysis of media parades of criminal suspects highlights the tension between law-enforcement spectacle and the constitutional rights to privacy, fair hearing and dignity.⁸⁴ Likewise, Amadi's discussion of the right to silence and the presumption of innocence is useful in showing how courts are required to maintain an equilibrium between public security and the rights of suspects.⁸⁵ In the same vein, Hasan and Amadi's work on the Nigerian criminal-justice system underscores how systemic delay, pre-trial detention and law-enforcement practice make value-laden judicial reasoning practically necessary if rights are to be protected in any meaningful way.⁸⁶

Positivist Constraints in Human Rights Adjudication

Dualism and the Status of Treaties

As already noted, the Supreme Court in *Abacha v Fawehinmi* held that international treaties, including human-rights treaties, do not automatically have domestic effect unless enacted into law by the National Assembly.⁸⁷ The enforceability of the African Charter therefore rests on its domestication, not on its moral attraction alone.⁸⁸ This dualist doctrine imposes real constraints. Courts cannot directly enforce treaties such as the ICCPR or CEDAW in the absence of domestication, although they may use them as persuasive aids in interpreting constitutional rights.⁸⁹ This reflects the positivist insistence that binding norms must pass through constitutionally recognised law-making processes. At the same time, even technical procedural doctrines often contain moral undercurrents. For example, scholarship on abuse of court process shows that although the doctrine is formally rooted in procedural law and

⁸¹ *Abdullahi v Federal Republic of Nigeria* (2016) 10 NWLR (Pt 1521) 475 (CA).

⁸² Anti-Torture Act 2017.

⁸³ Administration of Criminal Justice Act 2015 ss 293–299.

⁸⁴ N Weje Ibuchim, 'Rights Against Media Parade and Public Identification of Criminal Suspects: The Privacy Rage' (2023) *SSRN Electronic Journal*.

⁸⁵ J Amadi, 'Right to Silence and the Presumption of Guilt: Fixing the Judicial Equilibrium' (2022/2023) *Degema Bar Journal of Public Law & Contemporary Issues*.

⁸⁶ B Abdullahi Hasan and Jerry Amadi, *Crime and the Criminal Justice System in Nigeria: With Notes on the Advance Fee Fraud and Other Related Offences Acts* (Pearl Publishers 2009).

⁸⁷ *Abacha v Fawehinmi* (n 10).

⁸⁸ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (n 11).

⁸⁹ See *Ogugu v State* (1994) 9 NWLR (Pt 366) 1 (SC).

precedent, its application frequently turns on broader considerations of fairness, convenience and the integrity of judicial process.⁹⁰ This demonstrates that even within a positivist structure, adjudication may still reflect substantive justice concerns.

Non-Justiciability of Chapter II of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

A further positivist constraint is the general non-justiciability of the Fundamental Objectives and Directive Principles of State Policy contained in Chapter II of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Section 13 directs all organs of government and all authorities and persons exercising legislative, executive or judicial powers to conform to, observe and apply Chapter II. Section 6(6)(c), however, generally excludes judicial power over questions whether governmental acts, omissions, laws or decisions conform to those objectives, except where the Constitution otherwise provides.⁹¹ The orthodox judicial position was stated in *Okogie v Attorney-General of Lagos State*, where the Court of Appeal held that the educational objectives in Chapter II could not, without more, ground an enforceable claim.⁹² In *Attorney-General of Ondo State v Attorney-General of the Federation*, the Supreme Court confirmed that Chapter II provisions may become enforceable where the Constitution or legislation enacted by a competent legislature gives them legal effect.⁹³ The doctrine therefore does not render the Chapter meaningless; rather, it restricts direct enforcement in the absence of an enabling legal basis. Scholarly opinion has increasingly challenged an absolute understanding of non-justiciability. Agwor argues that Chapter II retains normative and interpretive significance and should be approached in the spirit of the Constitution rather than treated as a collection of empty political promises.⁹⁴ Nwauzi maintains that the bar is not total, particularly in light of legislative implementation, the domesticated African Charter and the constitutional competence of the National Assembly to establish bodies for promoting the objectives.⁹⁵ Olaiya and Duru likewise associate rigid non-justiciability with weak accountability and identify pathways through which specific objectives may acquire enforceable content.⁹⁶ The practical effect of the doctrine is most visible in relation to health, education, housing, welfare and environmental protection. Courts are often unable to enforce these interests directly as Chapter II rights. They may nevertheless draw upon the Chapter as an interpretive guide, enforce legislation enacted to implement it, apply the African Charter, or interpret the justiciable rights to life and dignity in a manner sensitive to socio-economic conditions. Decisions such as *SERAC* and *Gbemre* illustrate the use of regional rights and Chapter IV guarantees as indirect gateways to environmental and socio-economic protection. The non-justiciability of Chapter II therefore demonstrates the central tension examined in this

⁹⁰ O Ebiemere, 'Abuse of Court Process: Parties and Issues for Determination, Determining Elements' (2022).

⁹¹ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 6(6)(c) and 13.

⁹² *Okogie v Attorney-General of Lagos State* (1981) 2 NCLR 337 (CA).

⁹³ *Attorney-General of Ondo State v Attorney-General of the Federation* (2002) 9 NWLR (Pt 772) 222 (SC).

⁹⁴ D O N Agwor, 'The Non-Justiciability of the Fundamental Objectives and Directive Principles of State Policy under the Constitution of the Federal Republic of Nigeria, 1999 (as amended) Vis-a-vis its Justiciability in the Spirit of the Law' (2022) 10(1) International Journal of Innovative Legal & Political Studies 117.

⁹⁵ L O Nwauzi, 'Justiciability of Fundamental Objectives and Directive Principles of State Policy under the 1999 Nigerian Constitution' (2017) 3(5) International Journal of Law 29.

⁹⁶ T A Olaiya, 'Interrogating the Non-Justiciability of Constitutional Directive Principles and Public Policy Failure in Nigeria' (2015) 8(3) Journal of Politics and Law 23; Onyekachi Duru, 'The Justiciability of the Fundamental Objectives and Directive Principles of State Policy under Nigerian Law' (2012) SSRN.

study. Positivism prevents courts from converting every desirable social objective into an enforceable right without constitutional or legislative authority. Natural-law reasoning, however, encourages judges to recognise that life, dignity and equality may be emptied of practical meaning where the basic conditions of health, education, welfare and a safe environment are ignored. A coherent approach should respect the textual limitation while giving Chapter II substantial interpretive weight and enforcing its objectives whenever legislation, Chapter IV or the African Charter supplies an appropriate legal foundation.

Separation of Powers and Institutional Restraint

Positivist doctrine also manifests in judicial deference to the political branches in matters seen as policy-laden. Courts have sometimes declined to pronounce on the constitutionality of economic measures, security policies or politically sensitive disputes where explicit rights are not clearly infringed.⁹⁷ This reflects awareness of institutional competence and the need to preserve judicial legitimacy. However, excessive restraint may also allow rights violations to persist where the courts are reluctant to intervene.

Legal Realism and the Nigerian Context

Legal realism directs attention to the social and political conditions that shape judicial behaviour. In Nigeria, several contextual factors have influenced human-rights adjudication between 2000 and 2024. These include the legacy of military rule, authoritarian policing practices, chronic corruption and impunity, security challenges such as insurgency and terrorism, the growth of civil-society organisations, and increased international and regional scrutiny of Nigeria's human-rights record. Judicial decisions in cases such as *IGP v ANPP*, *Fawehinmi v IGP* and *Odafe v AGF* can therefore be understood as responses to systemic abuses involving restrictions on political protest, politically motivated non-investigation of crimes, and degrading detention conditions. Courts, conscious of their place in the post-military democratic order, have in some cases adopted a more assertive posture than in earlier periods. At the same time, realism explains inconsistency. In some politically sensitive or security-related cases, courts have shown marked deference to the executive, upholding rights restrictions in the name of public order or national security.⁹⁸ Delay in litigation, uneven enforcement of judgments, and occasional allegations of judicial corruption further expose the gap between doctrine and lived reality. Realism therefore does not displace natural law or positivism; rather, it helps explain how they operate in actual judicial practice.

Comparative Insights and Lessons for Nigeria

i. South Africa

South Africa's 1996 Constitution explicitly constitutionalises values of human dignity, equality and freedom and makes them central to rights interpretation.⁹⁹ In *S v Makwanyane*, the Constitutional Court abolished the death penalty by grounding its reasoning in life, dignity and international human-rights standards.¹⁰⁰ Later decisions such as *Grootboom* and *Treatment*

⁹⁷ See generally *Buhari v Obasanjo* (2005) 13 NWLR (Pt 941) 1 (SC).

⁹⁸ A Ojo, 'Judicial Deference and Human Rights in Nigeria' (2018) 2 *NALT Journal of Human Rights* 45.

⁹⁹ Constitution of the Republic of South Africa 1996 s 1(a), ch 2.

¹⁰⁰ *S v Makwanyane* 1995 (3) SA 391 (CC).

Action Campaign gave substantive content to socio-economic rights such as housing and health care.¹⁰¹ South African jurisprudence demonstrates what occurs when natural-law-type values are explicitly entrenched in constitutional text. Courts articulate moral reasoning openly, and socio-economic rights become more judicially manageable. Nigeria's experience has been more cautious, partly because of the absence of similarly explicit value clauses and the non-justiciability of Chapter II. Nevertheless, the increasing use of dignity, equality and life as interpretive anchors suggests a modest convergence.

India

India's Supreme Court has greatly expanded fundamental-rights protection through judicial activism. In *Maneka Gandhi v Union of India*, the Court held that any law depriving liberty must be just, fair and reasonable, thereby introducing substantive due process into constitutional interpretation.¹⁰² In *Vishaka v State of Rajasthan*, the Court used constitutional principles and CEDAW to formulate binding protections against workplace sexual harassment in the absence of legislation.¹⁰³ India's public-interest-litigation jurisprudence has also enabled courts to hear claims on behalf of disadvantaged groups who would otherwise lack access to justice.¹⁰⁴ This experience shows how courts, motivated by commitments to dignity and justice, can creatively use existing constitutional provisions to address structural rights violations. Nigerian developments under the FREP Rules move in a similar direction, though less dramatically.

United Kingdom and the European Convention System

The Human Rights Act 1998 transformed the UK's traditionally positivist system by requiring courts to interpret legislation, as far as possible, compatibly with Convention rights.¹⁰⁵ In *R v Secretary of State for the Home Department, ex parte Daly*, the House of Lords used proportionality review to strike down a prison-search policy that unjustifiably interfered with confidential legal correspondence.¹⁰⁶ In *A v Secretary of State for the Home Department*, the House of Lords held that indefinite detention of foreign terrorism suspects violated liberty and equality guarantees.¹⁰⁷ These decisions show that strong rights protection is compatible with a formally positivist system where courts are empowered by a rights instrument and are willing to interpret legislation purposively. That lesson is relevant to Nigeria, where sections 33–46 of the Constitution and the FREP Rules already provide an important basis for rights-oriented adjudication.

Synthesis: Interaction of Natural Law, Positivism and Realism in Nigerian Jurisprudence

The foregoing analysis shows that Nigerian human-rights adjudication between 2000 and 2024 cannot be neatly categorised as either purely positivist or purely natural-law-based. Rather, it reflects a structured interaction of jurisprudential traditions. Positivism supplies the framework

¹⁰¹ *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC); *Minister of Health v Treatment Action Campaign (No 2)* 2002 (5) SA 721 (CC).

¹⁰² *Maneka Gandhi v Union of India* AIR 1978 SC 597.

¹⁰³ *Vishaka v State of Rajasthan* AIR 1997 SC 3011.

¹⁰⁴ See eg *Hussainara Khatoon (I) v Home Secretary, State of Bihar* (1980) 1 SCC 81.

¹⁰⁵ Human Rights Act 1998 (UK).

¹⁰⁶ *R v Secretary of State for the Home Department, ex parte Daly* [2001] 2 AC 532 (HL).

¹⁰⁷ *A v Secretary of State for the Home Department* [2005] 2 AC 68 (HL).

by defining formal sources of law, jurisdiction and procedure.¹⁰⁸ Natural law operates as a normative compass, visible in repeated appeals to dignity, equality, fairness and inherent rights. Realism provides the explanatory lens by showing how political transition, social pressure, institutional capacity and security crises shape the timing and intensity of judicial protection. This hybrid model avoids both extremes. It neither romanticises judges as moral heroes nor reduces them to passive technicians of enacted text. Instead, it recognises both the normative aspirations and the practical limits of human-rights adjudication in Nigeria.

Critical Evaluation of Nigerian Jurisprudence (2000–2024)

Several strengths and weaknesses emerge from this hybrid jurisprudence. Nigerian courts have gradually embraced purposive and liberal interpretation of fundamental rights, moving away from older rigid formalism. There is increasing willingness to draw on regional and, persuasively, international human-rights norms, especially through the domesticated African Charter and references to instruments such as the ICCPR and CEDAW. Courts have also used dignity and equality to challenge discriminatory customs and to protect vulnerable groups including women, children, detainees and environmental victims. Procedural reforms, especially the FREP Rules 2009, have further broadened access to remedies and facilitated public-interest litigation. A similar normative orientation is also reflected in wider Nigerian legal scholarship, including work that treats transparency, accountability and institutional responsibility as standards by which law and regulation should be assessed.¹⁰⁹

Weaknesses and Challenges of Human-Rights Adjudication in Nigeria

Despite the significant doctrinal gains recorded between 2000 and 2024, the influence of natural-law values on Nigerian human-rights adjudication remains uneven and is limited by jurisprudential, constitutional, institutional and socio-political challenges. These weaknesses affect both the quality of judicial reasoning and the practical value of remedies obtained by victims. The first challenge is the absence of a clearly articulated theory of rights interpretation. Nigerian courts frequently invoke dignity, justice, fairness, equity and the spirit of the Constitution, but they rarely explain how those values are to be identified, ranked or balanced when they conflict with public interests or competing rights. Unlike the structured proportionality jurisprudence developed in South Africa, Canada, the United Kingdom and parts of Europe, Nigerian decisions often move from the existence of a right directly to a conclusion without consistently applying the stages of legitimate aim, suitability, necessity and overall proportionality.¹¹⁰ This reduces predictability and makes it difficult for lower courts to apply a common analytical method. Secondly, the positivist structure of the Constitution places real limits on rights protection. Section 12 restricts the direct enforcement of undomesticated treaties, while section 6(6)(c) generally excludes direct litigation founded only on Chapter II. These rules preserve constitutional procedure and democratic legitimacy, but they also narrow

¹⁰⁸ D O.N. Agwor and Ogorchukwu Igila, 'An X-Ray of the Doctrine of Stare Decisis in Nigeria' (2022) 10(1) *International Journal of Business & Law Research* 98.

¹⁰⁹ J Amadi and Kuruye Dumotein Douglas, 'An Analysis of Directors' Remuneration Disclosure Regime in the United Kingdom: Lessons for Nigeria' (2025) 20(1) *Journal of Jurisprudence, International Law and Contemporary Legal Issues* 88–97.

¹¹⁰ R Alexy, *A Theory of Constitutional Rights* (Julian Rivers tr, Oxford University Press 2002); *R v Oakes* [1986] 1 SCR 103 (SCC); *R v Secretary of State for the Home Department, ex parte Daly* [2001] 2 AC 532 (HL).

the judicial resources available for enforcing socio-economic rights and international standards.¹¹¹ The result is an unequal pattern in which civil and political rights receive more direct constitutional protection than health, housing, education, social security and environmental welfare.

Thirdly, judicial precedent is not always consistent. Some courts adopt liberal and purposive approaches, while others insist on technical procedure, narrow standing or strict textualism. Differences in the treatment of customary law, public-interest litigation, security restrictions and socio-economic claims may produce uncertainty for litigants. The doctrine of stare decisis promotes stability, but conflicting decisions, delayed appellate clarification and occasional failure to distinguish binding holdings from broad dicta may weaken coherent development.¹¹² Fourthly, delay, cost and limited access to legal representation undermine the enforcement of rights. Fundamental-rights cases frequently concern persons in detention, victims of police abuse, women, children, persons with disabilities and economically vulnerable communities. For such applicants, a favourable judgment delivered after prolonged litigation may provide little practical relief. Inadequate court facilities, congested dockets, adjournments, weak record management and limited legal-aid capacity reduce the effectiveness of the FREP Rules' commitment to speedy and accessible justice.¹¹³

Fifthly, the enforcement of judgments remains a serious problem. Courts may award damages, issue injunctions or order release from detention, yet compliance by security agencies and public authorities is not always prompt. The requirement of governmental consent in certain enforcement situations, bureaucratic resistance and the absence of effective follow-up mechanisms can transform judicial victories into symbolic declarations. Human-rights adjudication is meaningful only where remedies are implemented and responsible officials face consequences for disobedience.

Sixthly, executive pressure, security concerns and political sensitivity sometimes encourage excessive judicial deference. Insurgency, terrorism, electoral conflict and public-order disputes create legitimate governmental concerns, but broad appeals to national security may be used to justify detention, surveillance or restrictions on assembly and expression. Courts must therefore distinguish genuine and proportionate security measures from vague assertions employed to shield arbitrary power. Realist analysis shows that the willingness of judges to intervene may be influenced by institutional caution, political climate and perceptions of judicial capacity.

Seventhly, law-enforcement culture continues to generate recurring violations. Torture, coerced confessions, arbitrary arrest, prolonged detention, media parade of suspects and poor custodial conditions persist despite constitutional guarantees, the Administration of Criminal

¹¹¹ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 6(6)(c) and 12; *Abacha v Fawehinmi* (2000) 6 NWLR (Pt 660) 228 (SC).

¹¹² D O N Agwor and Ogorchukwu Igila, 'An X-Ray of the Doctrine of Stare Decisis in Nigeria' (2022) 10(1) *International Journal of Business & Law Research* 98.

¹¹³ Fundamental Rights (Enforcement Procedure) Rules 2009, Preamble; Grace Abraham Ahiakwo and Jerry Amadi, 'Legal Issues and Challenges Militating Against Seamless Land Registration in Nigeria' (2024) 10(3) *International Journal of Law* 70.

Justice Act and the Anti-Torture Act.¹¹⁴ The gap between legal prohibition and official practice demonstrates that the moral aspirations of law require training, supervision, independent investigation and personal accountability. Without institutional reform, rights-friendly judgments may address individual cases without changing the systemic conditions that produce abuse.

Eighthly, the protection of vulnerable and marginalised groups remains incomplete. Women continue to experience discriminatory customary practices and gender-based violence; children face uneven implementation of the Child's Rights Act; persons with disabilities encounter inaccessible buildings, transport, employment and justice institutions; and poor communities bear disproportionate environmental and socio-economic burdens.¹¹⁵ Scholarship on nuisance, environmental wellbeing and discriminatory custom illustrates that dignity includes the material and social conditions necessary for peaceful and equal participation, not merely freedom from direct state interference.

Ninthly, legal awareness and documentation are inadequate. Many victims do not know the remedies available under the Constitution, the FREP Rules, the African Charter or specialised legislation. Others cannot obtain medical reports, detention records, photographs, expert evidence or reliable legal representation. Civil-society organisations and the National Human Rights Commission help to reduce this gap, but their resources and enforcement powers remain limited. A rights-conscious legal order requires accessible information, effective complaint mechanisms and reliable data on the incidence and outcome of rights litigation.

Finally, Nigerian courts rarely state expressly the jurisprudential basis of their moral reasoning. The implicit use of natural-law values has produced important decisions, but theoretical opacity can make rights adjudication appear subjective or result-oriented. Greater judicial self-consciousness would not require courts to cite Aquinas, Finnis or Dworkin in every case. It would require them to explain how dignity, equality, fairness and the common good are grounded in the Constitution, precedent, the African Charter and the institutional role of the judiciary. Such transparency would strengthen legitimacy, consistency and academic understanding. These weaknesses do not negate the progress identified in this chapter. They show that the future of Nigerian human-rights adjudication depends on the disciplined integration of moral principle with positive law, structured proportionality, faithful precedent, institutional independence and effective remedies. Natural-law values can guide adjudication, but they must operate through clear legal reasoning and institutions capable of translating judgments into lived protection. This paper has examined the interaction of natural law, positivism, realism and interpretivism in Nigerian human-rights adjudication between 2000

¹¹⁴ Anti-Torture Act 2017; Administration of Criminal Justice Act 2015; Jerry Amadi, 'Right to Silence and the Presumption of Guilt: Fixing the Judicial Equilibrium' (2019) 1(1) Degema Bar Journal of Public Law & Contemporary Issues 1; Nnorom Weje Ibuchim, 'Rights Against Media Parade and Public Identification of Criminal Suspects: The Privacy Rage' (2023) SSRN Electronic Journal.

¹¹⁵ Child's Rights Act 2003; Violence Against Persons (Prohibition) Act 2015; Discrimination Against Persons with Disabilities (Prohibition) Act 2018; Barakat Adebisi Raji and Grace Ogonda Akolokwu, 'Discriminatory Customary Practices Against Women's Rights' (2019) 27(1) IIUM Law Journal 89; Alawa Stephen Tombari and JT Enekeme, 'Legal Appraisal of the Breach and Observance of the Law of Nuisance in Nigeria' (2024) 18(2) Journal of Jurisprudence, International Law and Contemporary Legal Issues 78.

and 2024. It has shown that although the Nigerian legal system remains structurally positivist, judicial practice in human-rights cases frequently reflects natural-law commitments to dignity, equality and substantive justice, filtered through the realities of Nigerian politics and institutions.¹¹⁶

CONCLUSION

This study has demonstrated that human-rights adjudication in Nigeria between 2000 and 2024 is best understood as a hybrid system in which natural law, positivism and realism operate in interaction rather than isolation. At the structural level, the Nigerian legal order remains positivist. The Constitution, statutes and domesticated treaties constitute the formal sources of rights and remedies; courts continue to affirm constitutional supremacy, the dualist approach to treaties, and the textual non-justiciability of certain constitutional provisions. Without this positivist architecture, the judicial protection of rights would lack clear legal authority and institutional legitimacy. Yet the study also shows that Nigerian courts increasingly infuse rights adjudication with natural-law-type reasoning. They speak of rights as inherent and antecedent to political society, invoke human dignity and equality as interpretive standards, reject customs repugnant to natural justice, equity and good conscience, and interpret life and liberty in ways that reflect substantive, rather than merely formal, conceptions of freedom. Decisions such as *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo*,¹¹⁷ *Esabunor v Faweya*,¹¹⁸ *Mojekwu v Mojekwu*,¹¹⁹ *Ukeje v Ukeje*,¹²⁰ *Inspector-General of Police v All Nigeria Peoples Party (ANPP)*,¹²¹ *Fawehinmi v Inspector-General of Police*¹²² and *Gbemre v Shell Petroleum Development Company Nigeria Ltd*¹²³ illustrate this judicial tendency. At the same time, legal realism remains essential to understanding Nigerian judicial behaviour. The legacy of authoritarian governance, persistent rights abuses, executive pressure, weak institutional capacity and the growth of civil society all shape the actual operation of rights adjudication. These realities help explain why Nigerian courts sometimes appear bold and rights-protective, and at other times cautious and deferential. The central conclusion of this study is therefore that natural law theory has exerted a real, though often implicit, influence on human-rights adjudication in Nigeria during the Fourth Republic. Its influence is visible not in the abandonment of positive law, but in the manner in which courts interpret positive law so as to protect the human person against arbitrariness, degradation, inequality and abuse of power. However, that influence remains mediated by a positivist constitutional framework and constrained by institutional realities. The result is a jurisprudence that is promising and normatively rich, but still uneven in expression and effect. A more mature and coherent Nigerian human-rights jurisprudence will require deeper judicial engagement with the moral foundations of rights, clearer doctrinal tools for balancing competing interests, and stronger

¹¹⁶ Convention on the Elimination of All Forms of Discrimination against Women 1979; African Charter on Human and Peoples' Rights 1981 arts 2 and 18(3).

¹¹⁷ (2001) 7 NWLR (Pt 711) 206 (SC).

¹¹⁸ (2019) LPELR-46961 (SC).

¹¹⁹ (1997) 7 NWLR (Pt 512) 283 (CA).

¹²⁰ (2014) 11 NWLR (Pt 1418) 384 (SC).

¹²¹ (2007) 18 NWLR (Pt 1066)

¹²² (2002) 7 NWLR (Pt 767) 606 (SC).

¹²³ (2005) AHRLR 151 (NgHC 2005).

institutional support for a judiciary that is independent, rights-conscious, practically effective and vigilantly proactive.

Recommendations

Strengthening Jurisprudential Education and Awareness of the Moral Foundations of Human Rights

The National Judicial Institute, Nigerian law faculties, the Nigerian Bar Association and related professional bodies should deepen education and training on Natural Law Theory, constitutional values and the philosophical foundations of human rights. Such training should include comparative value-based constitutional reasoning, including the South African experience, and should equip judges and lawyers to articulate the relationship between positive law, justice, dignity and the common good more clearly in rights adjudication.¹²⁴

Strengthening Nigeria's Legal and Constitutional Human-Rights Framework

The National Assembly and the courts should strengthen the legal framework governing rights protection. Limitations on rights should be assessed through a structured proportionality test examining legitimate aim, suitability, necessity and proportionality in the strict sense.¹²⁵ Courts should also make more systematic use of ratified but undomesticated human-rights instruments as persuasive interpretive aids, consistently with section 12 of the Constitution, the Fundamental Rights (Enforcement Procedure) Rules 2009 and relevant judicial authority.¹²⁶ Although Chapter II may remain generally non-justiciable, its provisions should guide the interpretation of enforceable Chapter IV rights and should be given legal effect whenever legislation or the domesticated African Charter supplies an appropriate foundation.¹²⁷

Adoption of Explicit Value-Based Interpretation

The Supreme Court and the Court of Appeal should expressly recognise dignity, equality, liberty, fairness and the common good as guiding constitutional values in the interpretation of Chapter IV. Judicial decisions should identify the legal sources of those values and explain how they influence the resolution of competing rights and public interests. This would make the existing natural-law influence on Nigerian adjudication more transparent, disciplined and predictable.

Transparent Integration of Natural Law, Positivism, Realism and Interpretivism

Courts should remain faithful to the Constitution, statutes, jurisdiction and binding precedent while openly explaining how justice, dignity, social context and constitutional principles influence interpretation. Greater jurisprudential transparency would reduce the appearance of

¹²⁴ Constitution of the Republic of South Africa 1996; *S v Makwanyane* 1995 (3) SA 391 (CC).

¹²⁵ *R v Secretary of State for the Home Department, ex parte Daly* [2001] 2 AC 532 (HL). *R v Oakes* [1986] 1 SCR 103 (SCC).

¹²⁶ *Ogugu v State* (1994) 9 NWLR (Pt 366) 1 (SC); *Abacha v Fawehinmi* (2000) 6 NWLR (Pt 660) 228 (SC); Fundamental Rights (Enforcement Procedure) Rules 2009.

¹²⁷ *Okogie v Attorney-General of Lagos State* (1981) 2 NCLR 337 (CA); *Attorney-General of Ondo State v Attorney-General of the Federation* (2002) 9 NWLR (Pt 772) 222 (SC); *Gbemre v Shell Petroleum Development Company Nigeria Ltd* (2005) AHRLR 151 (NgHC 2005).

subjective decision-making, improve consistency among lower courts and demonstrate that value-based adjudication operates within, rather than outside, the recognised legal framework.

Strengthening Institutions, Access to Justice and the Implementation of Remedies

Government and judicial authorities should strengthen judicial independence, improve case management and establish strict timelines for urgent fundamental-rights matters in accordance with the spirit of the Fundamental Rights (Enforcement Procedure) Rules 2009.¹²⁸ Constitutional reform should also be considered to make defined core socio-economic rights enforceable, particularly where legislation has already operationalised them.¹²⁹ The National Assembly should prioritise the domestication of major ratified human-rights treaties in order to provide firmer domestic legal bases for enforcement.¹³⁰ The National Human Rights Commission and the Legal Aid Council should receive adequate funding, operational independence and enhanced capacity to investigate abuses, support indigent applicants and follow up the enforcement of judgments.¹³¹ Civil-society organisations and professional bodies should continue strategic public-interest litigation and public enlightenment, particularly for women, children and other vulnerable groups.¹³² The liberal standing principles recognised in regional rights litigation and the Fundamental Rights (Enforcement Procedure) Rules should be used to expand meaningful access to justice.¹³³ If implemented, these recommendations would align the project's research questions, objectives and findings with practical reforms and would strengthen the constructive interaction between natural-law principles and Nigeria's positivist constitutional framework. They would also move Nigerian human-rights adjudication closer to its normative ideal: a system in which law is not only validly enacted, but also substantively just and effectively enforced.

¹²⁸ Fundamental Rights (Enforcement Procedure) Rules 2009.

¹²⁹ *Okogie v Attorney-General of Lagos State* (1981) 2 NCLR 337 (CA); *Attorney-General of Ondo State v Attorney-General of the Federation* (2002) 9 NWLR (Pt 772) 222 (SC).

¹³⁰ *Abacha v Fawehinmi* (2000) 6 NWLR (Pt 660) 228 (SC).

¹³¹ National Human Rights Commission (Amendment) Act 2010; Legal Aid Act, Cap L9 LFN 2004.

¹³² Desmond O.N. Agwor, Empire Hechime Nyekwere and Innocent C.S. Okogbule, 'A Legal Assessment of the Protection of the Human Rights of Women and Children under the United Nations 2030 Agenda for Sustainable Development Goals (SDGs) in the Light of Some Selected Human Rights Instruments' (2022) 10(8) Global Journal of Politics and Law Research 55.

¹³³ *Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria* (ECW/CCJ/APP/08/08, judgment of 27 October 2009).