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THE ROLE OF JUSTICE IN AN IDEAL DEMOCRATIC SYSTEM [NIGERIA AS A CASE STUDY]

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Abstract
The role of justice in any democratic society cannot be overemphasized. This is because it accelerates or slows the society in the area of proper growth and development. Hence, it is a given that justice and democracy are central ideals of a liberal political morality. Although vast bodies of literature have been devoted to each of them, their relation to each other has remained relatively under-explored. Nevertheless, contemporary liberals agree that only democratic arrangements can be just, but disagree on why democracy matters. Some believe its value is instrumental; others believe it is intrinsic. On the former view, democratic participation is not a requirement of justice but a means of discovering or implementing its demands. Democracy is intrinsically just: it is part of any plausible articulation of justice itself. This paper argues that in the presence of thin *reasonable disagreement* about justice, we should value democracy only instrumentally (if at all); in the presence of *deep reasonable disagreement* about justice, we should value it also intrinsically, as a necessary demand of justice. Since the latter type of disagreement is pervasive in real-world politics. It pays particular attention to the Nigerian society and how justice would imply an ideal democratic system.
Key Words: Justice, Democracy, Ideal System, Nigeria

Introduction
Persistent and pervasive inequalities dominate contemporary economies and systems of government. Poverty, deprivation, and conflicts are standard features all around the globe, even in rich democracies. Though globalization offers the opportunity for the world to come closer together through various cross-border constellations of contact, communication, and participation, it has been a mixed blessing for human rights. However, to make democracy fulfill its potential, it has to be transformed from its static and formal state to a more engaged, participatory, and interactive mode of governance. It has to be embedded in social conditions and made more integrative in responding to the complexities of social justice. As democracy goes global, its focus moves from social justice to global justice, in which emerging global human rights movements play a key role.

Justice

There has been endless academic conflict concerning the concept of justice. This shows the difficulty involved in defining exactly what that concept means. Justice has been defined in terms of equality for everyone [everyone should get or have the same amount, regardless of how hard they work, or "what they put in]. Nevertheless, majority still define "justice" in terms of equity—[which states that people should get benefits in proportion to what they contributed to producing those benefits]. In other words, the harder and better you work, the more you should get as a reward for that work. Some scholars appropriate this concept to be karmic. Here, they are of the view that people should suffer costs in proportion to the harm they have done to others, which yields the concept of retaliation. If John killed the brother of Jude, justice would mean, to kill John or his brother also. Still, other people believe in equity with a bottom 'safety-net" level which protects people who, because of misfortune or disability, are unable to work or even help themselves. There is no rational way to compare these different approaches, other than to observe that one is more consistent with one culture than another, and that some yield more benefits or more harm than others.

The concept of retaliation, while very widespread, tends to cause escalation, and can yield enormous harm. For example, what should lgbos do as regards the omen they dealt on them leaving hundreds dead). Hence, it is given that when people from different cultures come into conflict, as happens so often with minority and ethnic group conflicts, such differing definitions of justice can be very hard to reconcile. Still another definition of justice focuses not on output, but on process. Results can be "just" if they were obtained by a "just" or fair process. Then the question becomes: what is a fair process? The answer can be that it yields equal or equitable outcomes. It can also be that it is predictable or accessible. Other answers might be that it is based on rational cost-benefit analysis or that it follows traditional procedures. All of these answers are right,' in that justice can be defined in that way, and has often been so. But problems develop when one party to a conflict defines justice in one way and their opponent(s) define it differently. This happens very often in domination conflicts, in which one that is a much more powerful group defines "justice" in terms of the status quo. This may be disguised using an equity argument, saying that the more powerful group contributes more to the society, hence deserves the greater rewards. Or, it may be disguised in terms of tradition or predictability. Analyzing the concept of justice here may lead to an infinite regress.

This article works with John Rawls definition of *justice* as basic fairness in multidimensional interactions among humans and their institutions. The purpose of such varied interactions is to balance democracy with striving for security. (John Rawls, 2003:3-102.).

Implicit in it seems to be a form of social contract inspired by the fairness principle contributing to societal stability. It helps to create a common ground on which political communities with the nation states being their highest expression can build ideologies of understanding and cooperation. But without a deep commitment of the leadership to justice as the basic principle of fairness in both policymaking and implemention, i.e., governance, the potential for advancement would remain static. Ensuring human rights and the due process of law—two most important dimensions of justice—could transform a static state, which sometimes becomes regressive, into a dynamic state of just policies and good governance---two sustainable anchors of development.

Amartya Sen (2000) argues that "development requires the removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or over-activity of repressive states". Thus, by justice, this article means a set of principles whose function is to distribute entitlements to valuable resources - including liberties, opportunities, income and wealth - among a plurality of agents competing for them. Principles of justice, therefore, answer the question: 'Who is entitled to what?' relative to a particular set of agents (fellow-citizens in the case at hand), who are competing over resources they need to pursue their ends and goals.

Literally, the word 'justice' could mean fairness, impartiality, evenhandedness, uprightness, fair-mindedness, equity, objectivity, neutrality, righteousness, honesty and disinterestedness (Wehmeier, 2001). In jurisprudence, it has a variety of meanings. It is an abstract concept that has provoked immense debates since the time of the stoic philosophers who saw it as the ultimate goal of natural law (Freeman, 2001). To these philosophers, justice is 'a constant and perpetual will of giving everyone his due', a natural attribute deducible from reason; it is universal, everlasting and unchangeable (Freeman, 2001). Early Christian philosophers such as St. Thomas Acquinas equally saw the concept as a universal moral value but with divine content (Freeman, 2001). John Finnis premised his natural law conception on the needs of the common good and the principle of redistributive justice (Finnis, 1980). He argues that injustice arises where an administrator 'exploits his opportunities by making stipulations intended not for the common good but for his own or his friend's, party's or faction's advantage or out of malice against some persons or group' and that 'the injustice is 'distributive' inasmuch as the official improperly seeks to subject others to his own decisions' (Finnis, 1980).

Democracy

In etymological terms, the word democracy comes from ancient Greek demokratia, which combines demos, the "people", with kratos, meaning "rule", "power" or "strength". Put together, the literal denotation of democracy is "rule by the people", culminating in a popular form of government. The historic origin of democracy roots in the Ancient Greek city-states of the fifth century BC, with Athens as the most prominent example. On the 19th of November 1863, Abraham Lincoln, at Gettysburg, Pennsylvania, defined *democracy* as **"government of the people, by the people, for the people"** This singular definition has been widely adopted as a measure for ascertaining what democracy would mean in a given context and at a particular period of time. Thus, every definition that came after this only acted as a complement to it and tends to designate the totality of the nature of people-participation in the governing process of the same people determining the governing procedure in time.

Democracy, here, means a set of collective decision-making processes in which those who belong to a particular group (society in the case at hand) have an equal say in determining the rules that should govern them. Although this principle can be operationalized in different ways, respect for it always involves protecting citizens' rights to free speech, expression and association, letting majoritarian elections determine who will hold political office and what laws will govern the community, and giving all adult citizens equal right to vote and be voted. Nigeria is a Democratic Society and the idea of justice is a vast one. One could talk of Economic Justice, Social Justice, Religious Justice, Relational Justice and Administrative Justice. Due to the broadness of the concept of justice, we shall focus here on Administrative Justice since it concerns the Nigerian Society mostly.

Administrative Justice in Nigeria

Administrative function essentially deals with decision-making. It is seen as an extension of the executive function in modern constitutional setting based upon the popular trichotomy of governmental powers, otherwise called separation of powers. From the latter concept, administration of justice is the primary responsibility of the Judiciary. Therefore, it may seem awkward to talk of 'administrative justice'. However, the latter concept has assumed much significance in the operational framework of modern bureaucratic systems and can be seen within the realm of administrative law. It has been variously defined. For instance, Mashaw defines it from the perspective of societal acceptability. The "justice" of an administrative system... means simply the qualities of the system that argue for the acceptability of its decisions (Mashaw, 1981).

French defines it as 'the perception of values or attitude about the way in which a decision maker should act' (French, 1999). The Bristol Center for Administrative Justice defines its scope as a system that involves judicial review, tribunals, inquiries, ombudsman and other

acceptable complaint procedures (Bristol Center for the Study of Administrative Justice, 1999). It is a complex set of values which includes natural justice, participation, democracy, efficiency, fairness, transparency, accountability and cost effectiveness. Essentially, it deals with procedures for correcting defective administrative decisions in order to safeguard the ideals of the rule of law (Creyke & McMillan, 2005).
Galligan conceives it from the perspective of the mechanisms for redress in the general adjudicatory system and he concludes that administrative justice involves the application of 'justice ideas' to the actions of government authorities and other bodies exercising governmental powers (Gilligan, 2009). Adler defines it as 'the justice that inheres in administrative decision making' and conceptualises it from two angles: the 'top-bottom' and the 'bottom-up' conceptions (Adler, 2006a).

The former sees administrative justice in terms of the principles enunciated by various redress mechanisms that come into play when people who are unhappy with the outcome of an administrative decision or with the process by which that decision was reached, challenge the decision and achieve a determination in their favour (Adler, 2006b). This conception restricts administrative justice to the formal judicial and other related avenues like the courts, tribunals and the Ombudsman system. On the other hand, the 'bottom-up' conception broadly sees it in terms of the justice inherent in routine administrative decision-making (Adler, 2006b). The focus here is on the level of adherence to the principles of procedural fairness starting with the 'street-level bureaucrat'. It is concerned with the justice inherent in first-instance decisions that characterise most bureaucratic settings.

Good Governance
'Good governance' has become a political and economic mantra in both national and international planes unlike the above two concepts. It has haboured within it much political elements. It emerged to offer explanation for the 'perpetual' poverty, wretchedness and malnutrition that many developing countries have been grappling with for decades. It is a combination of two words: 'good' and 'governance'. The word 'governance' has been variously defined (Oladoyin, 2012). It is a broader term that literally means general management or administration and control and could be employed in the perspective of different matters, whether in the private or public sectors. In the public sector, governance refers to 'the institutional underpinnings of public authority and decision-making', and broadly includes the 'institutions, systems, "rules of the game" and other factors that determine how political and economic interactions are structured and how decisions are made and resources allocated' (Grindle, 2010). According to the Commission on Global Governance, 'Governance is the sum of the many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which

conflicting or diverse interests may be accommodated and cooperative action taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions have either agreed to or perceive to be in their interest' (Commission on Global Governance, 1995). Landell-Mills defines governance as 'how people are ruled and how the affairs of a state are administered and regulated. It refers to a nation's system of politics and how this functions in relation to public administration and law. Thus, the concept of governance goes beyond that of "government" to include a political dimension (Nanda, 2006). Others viewed governance as comprising certain key elements such as political accountability, bureuacratic efficiency and fair and transparent legal framework (Oladoyin, 2012).

Similarly, 'good governance' has been variously defined. In Nigeria, it is often confused with the positive actions of elected officials, otherwise called 'democratic dividends' (Edighin & Etoghile, 2011; Akomolede & Bosede, 2012). Generally, it implies virtuous and progressive governance. While describing the concept as a 'fig leaf' invoked by international development agencies to 'invade safely the minefield of domestic politics', Grindle describes it as referring to a 'list of admirable characteristics of how government ought to be carried out', implying the notion that 'good governance is a positive feature of political systems and that bad governance is a problem that countries need to overcome' (Grindle, 2010). Michael Johnston defines it as the 'legitimate, accountable, and effective ways of obtaining and using public power and resources in the pursuit of widely accepted social goals' (Johnston).

Good governance encompasses different ideals. International donor agencies regard it as a prerequisite for sustainable economic development. For instance, the World Bank considers accountability and transparency, efficiency in how the public sector works, rule of law, and ordered interactions in politics as the key components of good governance (Grindle, 2010: 4-5). And the UNDP considers participation, transparency, accountability, effectiveness, and equity as its most important characteristics. Others include evocative ideas such as justice, fairness, decency and efficiency. In fact, it has become a common hallmark embedded in many countries' development plans.
Good governance sets the normative standards of development. It fosters participation, ensures transparency, demands accountability, promotes efficiency, and upholds the rule of law in economic, political and administrative institutions and processes. (Phillipines Development Plan, 2011-2016).

However, regardless of the origin and the politics inherent in the concept, it is clear that an effective and efficient system of public administration can only flourish in an atmosphere of openness, transparency and accountability. Decision-making and implementation of

government policies may continue without them but such a system will certainly lack credibility and can hardly guarantee fairness. Therefore, the broader conception of administrative justice examined above neatly fits into the good governance spectrum. Importantly, it is generally believed that the basic foundation for good governance is what came to be called the rule of *law.*

Administrative Justice in Nigeria

The idea of administrative justice in Nigeria is any justice obtainable outside the court system and is seen to represent the outcome of administrative adjudication which has a firm constitutional basis. The necessity for administrative tribunal was felt during the British colonial administration (Iluyomade & Eka, 1980; Alimi, unpublished). Today, administrative authorities have been statutorily created and conferred with discretionary powers, including quasi-judicial powers. There are five main categories of bodies exercising quasi-judicial functions. They are: specific constitutional and statutory tribunals (e.g Code of Conduct Bureau, the various Rent Tribunals, Investment and Securities Tribunals), executive or administrative entities (e.g Governors, Ministers, Commissioners), administrative agencies exercising public functions, the Ombudsman system (the Public Complaints Commission) and disciplinary committees or bodies established for professional organisations (e.g the Legal Practitioners Disciplinary Committee). These authorities perform diverse functions, depending on their mandate as may be contained in the instruments establishing them. In particular, they exercise adjudicatory functions and dispense justice; but the exercise of this function is subject to legal restraints constitutionally entrenched to ensure procedural justice. In *Obi Vs Mbakwe* (1985) the court held that a similar provision under the 1979 Constitution aims at ensuring smooth running of the administrative machinery by allowing agents of the executive to determine the rights of the people in accordance with certain laws that might be made from time to time.

Administrative Justice, Good Governance and the Nigerian Society

Undoubtedly, the accountability mechanisms within a political system can immensely contribute in curbing arbitrariness and unreasonable misuse of discretionary powers by officials. Good governance, devoid of its political elements or its constant invocation by international financial institutions and other donor agencies as precondition for financial aid, has some inherent virtues. As noted earlier, the central indicators of good governance include openness, transparency, accountability and fairness in the running of government (Udumbana, 2011). As it has been observed:

> 'it is the structure of rules and processes that affect the exercise of power, particularly with regard to openness, participation, accountability, effectiveness and coherence' (Udumbana, 2011).

The imperative of the rule of law and accountability in governance has been recognized by many African countries leading to series of reforms in public administration. For instance, following decades of political maladministration and economic misdirection in the continent, the African Charter on Democracy, Election and Good Governance (ACDEGG) was adopted by members of the African Union in 2007. The purpose of the Charter extends to the reorganisation and strengthening of public institutions for effective service delivery and efficiency in governance. It provides for access to and exercise of state power in accordance with the constitution of the state party and the principle of the rule of law; the principles of transparency and fairness in the management of public affairs; and states committed themselves to nurture, support and consolidate good governance (ACDEGG, 2007). This Charter followed the AU *Convention on Preventing and Combating Corruption adopted in 2003.*

Nigeria has made many policy and legislative efforts and reforms to capture the essence of good governance and translate it into reality (Ocheni & Nwankwo, 2012). We have *the Economic and Financial Crimes Commission Act, 2004, the Independent Corrupt Practices and Other Related Offences Act, 2000, the Fiscal Responsibility Act, 2007, the Code of Conduct Bureau and Tribunal Act, 1989,* and, more recently, *the Freedom of Information Act, 2011.* All these legislations have, as their main purpose, the entrenchment of good governance through accountability. And *the Freedom of Information Act, 2011,* in particular, seeks to ensure citizens' participation and accountability, openness and transparency in governance. It specifically guarantees access to information to the citizens. These laws complement the general constitutional position on administrative justice and good governance discussed above and other provisions such as section 22 which stresses the role of the media to "highlight the responsibility and accountability of the Government to the people" and section 15 which provides that "Government must eradicate all corrupt practices and abuse of power'.

In addition, institutional reforms have been initiated since 1999. Good governance mechanisms aimed at fighting corruption and abuse of powers were institutionalised. Anti-corruption agencies were created and vested with enormous discretionary powers (Oladoyin, 2012; Ocheni & Nwankwo, 2012; Odinkalu, 2010). These agencies include the Independent Corrupt Practices and Other Related Offences Commission (ICPC), Economic and Financial Crimes Commission (EFCC), Code of Conduct Tribunal, Public Complaint Commission and Nigeria Extractive Industries Transparency Initiative (NEITI) (Oladoyin, 2012; Ocheni & Nwankwo, 2012).

In spite of these legal and institutional reforms, good governance has eluded Nigeria. Abuse of powers and gross misuse of official discretion have become the key characteristics of public administration in the country. Corruption persists at all levels of government. Graft and embezzlement of public resources have perverted the exercise of official discretion. Allocation and revocation of rights of occupancy in the name of public purposes have been turned into a private property acquisition scheme. Privatization of government businesses and properties to cronies and a near-total collapse of state institutions and apparatus due to poor, abusive neglect or improper use of discretionary powers by administrators (CLEEN, 2010). And 'lootocracy' by public officials has become a common phenomenon. Odinkalu attributed the problem to the people for vesting the management of public trust and the control of resources and institutions on individuals who have turned embezzlement into 'the raison d'etre of public office' (Odinkalu, 2010). Although it is difficult to agree with this conclusion, the gravity of the situation is immeasurable. Sanitizing a public system turned upside down is undoubtedly a herculean task. Arguably, one fails to fathom the increasing push for unworkable reforms in the face of these realities. It may be argued further that the reforms were not instigated by genuine desire for good governance (Jibrin, 2001).

It is submitted that at the centre of this conundrum is the continuing neglect of other accountability mechanisms and the restrictive 'up-down' approach to administrative justice. Administrative justice goes beyond the traditional administrative adjudication and control by the courts. lt starts from the first instance decision-makers who are often neglected. But the first instant decision-makers take important administrative decisions that tend to have enormous consequences on public administration. The law as it currently stands takes this category of administrators for granted. And even in the case of top officials, it only intervenes through the common law principles and this occurs only where the court is called upon to review a decision. The newly created institutions have not been able to address the problems. The overwhelming majority of the decisions are, therefore, left 'unchecked'. It is submitted that the abuse of discretionary powers and the inadequacy of the law to effectively regulate their use through sufficient accountability mechanisms is at the heart of the unending political maladministration and economic turmoil that the country has been grappling with. Why not enact a legislation on Administrative Justice so that the scope be expanded and the 'bottom-up approach incorporated into the general system of public administration in the country? Are discretionary powers so unimportant that they should be left to the 'whims' of the Judge?

The only relevant enactments dealing with general administrative justice are the Ministers' Statutory Powers and Duties (Miscellaneous Provisions) Act, 1958 and the Code of Conduct Bureau and Tribunal Act, 1989. The latter was strengthened by the constitution through the establishment of a Code of Conduct Bureau vested with the responsibility of maintaining 'a

high standard of morality in the conduct of government business and to ensure that the actions and behaviours of public officers conform to the highest standards of public morality and accountability' (CFRN, 1999: Third Schedule). Arguably, these laws are not only antiquated but also inadequate in dealing with the complexity of modern public administration in the country. They are outdated and contain no substantive provisions on modern administrative justice. Other laws such as the Nigerian Extractive Industries Transparency Initiative Act, 2007 and the Public Procurement Act, 2001 are not meant to deal with the subject directly although they reechoed the fundamental need for good governance.

Conclusion

The fears of arbitrary use of powers have been instrumental in the development and formulation of several legal principles in different constitutional systems around the world; it is at the center of administrative law. The latter provides for control methods to preserve individual rights and liberty and avert abuse of powers. It is a mistake to assume that efficiency in public administration and overall governance can not coexist with the legal requirements for regulatory checks. Like in all human endeavors, an efficient system does require some regulations, otherwise it will definitely crumble and the state will become anything but a state. But it's also the fear of arbitrary use of discretion that made Dicey to condemn administrative law in Britain. Today, there is no doubt that the exercise of discretionary powers is necessary. Arguably, the Common Law has been instrumental in the slow development of this important aspect of law in Nigeria. It is from this context that the restrictive approach to administrative justice as 'judicially-centered' can be appreciated.

However, this is unhelpful in the light of the increasing complexities of administration in modern states. It is not enough to simply conceive administrative justice by reference to the decisions of the 'top shots' in the administrative system, nor should the latter be ignored. It is submitted that a wholistic approach is better. Administrative decisions from the 'root' are too important to be ignored. Administrative justice is too important to be left to the Judges to mould and develop. Public administration cannot wait for judicial happenstances; and the society cannot wait either. The problems are too pressing to wait. Administrative justice legislation is urgently needed in Nigeria. It should be the 'Bible' for administrators. Decision-makers must be aware of the legal constraints. This, it is hoped, will lead to attitudinal change and enhance the capacity of administrators while at the same time protecting the public.

The law of administration is essentially concerned with good governance. It enhances administrative efficiency, reinforces the rule of law and strengthens good governance. Officials and institutions must be responsive to popular will and democratic norms in the exercise of their powers otherwise the rule of law and good governance will be utterly

meaningless. The public should be able to detect errors in administrative decision. It should not be the preserve of Judges alone, because if public officers are to be held accountable then public scrutiny is essential. It is, therefore, important to evolve a broader and more conscious administrative justice that can adequately address the problems of public administration in Nigeria. This will undoubtedly help in eliminating or reducing the crisis of confidence in Nigeria's administrative system and encourage good governance.

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