Comparative Ideological and Other Alternative Conceptions of Social Justice for Public and Social Order

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Abstract

Consciously or otherwise, every society (state or culture) has its respective deep-seated notion of restorative, conciliatory, and in some way, retributive traditions of justice; and within extant milieu of rapid quest for development, political stability, justice, and moral order, interests in these traditions are growing around the world. Adopting a theoretical and phenomenological methodology in a historical matrix, this work takes examines the notion of justice from specific/individual perspective and also from an assemblage of cultures and other ideological traditions for a comparative analysis. Specifically, why do certain societies achieve reliable justice as against the other? By using an analytical and phenomenological review of existing literature on the subject areas/concept, this work sets to discover whether there are common elements in those conceptions; to determine the possible indicator and level of efficacy in each. The work discovers that contriving an adequate set of principles of social order is necessary for public order. It concludes that an efficacious foundation of justice breeds a desirable social order in the respective society. Consequently, it suggests that a globalized/transnational world would be enhanced by adopting workable national approaches to justice in order to achieve public order.

Keywords: Ideology, justice, liberal, fairness, public/social order, welfare

I. Introduction and Background of the Study

Even though what constitutes its province is contentious, of all the concepts in sociopolitical thought, the idea of justice is the most encompassing. This is because the term is eclectic and wide in application; having varying individual, ideological, cultural perspectives and other

contextual adaptations of the term. Thus the difficulty of delineating the prefecture of justice and its applicability stems from the fact of this multidimensional status of the term. Suitably, it must be pointed out that the quest for an appropriate model for the reconstruction of political authority has become an imperative today. Justice involves legal, political and social (restorative) strands. The term, *restorative*, (believed to have been coined by Albert Arthur Eglash (1971) in *Beyond restitution: Creative restoration*) is a process whereby victims, offenders and communities are collectively involved in resolving a dispute and the aftermath of an offence. However, the appeal of the idea of restoration is clearly indicated in Johnstone's (2002, 10) characterization of restorative justice: that there must be an acknowledged violation; and effort must be made to improve relationship between offenders and the offended. Basically the concern of the victims and the community is still with the need to reintegrate the offender into the society. Thus restoration is humanizing criminal justice; being forward-looking and problem-solving oriented.

But this idea of justice/restoration is not new in acephalous (non-State) communities—as different from contemporary state/transnational world. Hence one of the foremost issues confronting contemporary world concerns that of justice. But this would not arise once the scope of its gregarious nature and how those multifarious conceptions of the concept are put to some clear rational perspective for proper comprehension and praxis.

II. Methodology of the Study

This work adopts a phenomenological and analytical tool to review existing theoretical amid evident factual material to espouse the nature, perceptions, and other alternative conceptions of the concept of justice. By phenomenological methodology is meant focus on studying the phenomena that have impacted a subject/concept, an individual/issue. With this approach, we shall be able to sift the specifics and identifies which the phenomenon of justice possesses as perceived by persons and ideologies in some context. It shall also be used to study the commonality in the attitudes of those perceptions in praxis.

III. Social/Public Order

Human essence can only be realized in human society, whether it be small community, ethnic nationality, or state/country. Modern state-structure is a recent phenomenon and is fast developing. And with the growing rate of cooperation between and among states under an umbrella head of the United Nations (UN), with an overriding international legal structure as the *grund-norm* for member states, a world state (if not has emerged) seem to be emerging. While it is true that a state could be a nation or made up of several nationalities, or is a product of some agreement, it is also true that every state is a

representation of divergent individual and group interest fused into a common goal under a unique system of law, peace, order and security. In several decided statuses, consequently, and with the apparatuses of very boundless and effective modern communication technology, a world-culture has emerged—which marks the evolution and definition of a 'world-state or public order'.

Thus the phrase, *social/public order* could best be discussed by dismembering it into its two independent concepts—*social*, and *order*, each of which is meaningful independent of the other. On its part, the term, social implies that which relates to a group. Persons, systems, institutions, and other elements of interaction rely and influence each other in many significant ways in an extended interdependence. Men are tied to another/others in both symbiotic and non-symbiotic ways. Instrumental to the realization of these is value: the norms, methods and bureaucratic processes established to ensure order in society as culture—the totality of a people's ways of life and the progressive activity of learning such ways (Cuber, 1968, 76). A social order exists "when an entire community or society, for a significant portion of its history, is characterized by distinctive and interwoven patterns of social organization" (Broom and Selznick, 1973, 21). Whatever its nature, social order is "the total complex of the social institutions of a society and their interrelationships" (Hogan, 2006, 331). Corruption, violence, injustice, insecurity, underdevelopment, ineffective modes of social control could mar social order. Although many African researchers are looking back into their existing cultures and finding models and customs that can be adopted both to suit a culturally sensitive bases of social order, any useful measure must encourage responsibility and reflect a modicum of justice.

IV. The Nature of Justice: An Overview

The etymological (Latin) root of the word, *justice* means the quality of being *just*, fair or impartial. It means even-handedness and adherence to truth or fact and the rendering of what is due or merited to ones-self and others. It also means conformity to right principles with honesty and integrity (Webster, 1978); and it is historical. Justice has enkindled passion as well as controversy. Thus, the idea of justice has ignited enormous interest and research. Much of this interest has been mainly on social justice and scarcely on legal/conciliatory or meditative justice. Interest on legal ethic and jurisprudence is essential. Fortunately, this research is intended to fill-in a vacuum: to adumbrate the delicate but multi-faceted conceptions of the concept. There exist as much ideological as individual connotations of the concept. Problems of authority and government, elections and human rights, taxes, death penalty, hoarding, bribes and political corruption, liberty, education, *et cetera*, are all in some way or the other connected with the idea of justice. Thus the term makes sense to different individuals in different ways.

V. Justice: Some Classical Perceptions

Admittedly, the concept of *justice* is an eclectic one, but to Aristotle, justice is the human good. To St. Augustine, it is that ordering of the soul by virtue of which it comes to pass that we are no man's servants but servants of God alone (Munoz, 1996, 70). Plato held that every man is to be given what is due to him, such that we will consider as injustice when something belonging to one is taken away from or denied him. And this approach is akin to the Roman law which sees justice as a habit by which man renders to each one his due with a constant and perpetual will (Munoz, 71-72). Justice is fairness, due, dessert. Many researchers (individual/theoretical) have had varying conceptions of formal, legal and distributive rather than the metaphysical connotations of justice (Sterba, 1986).

To Sandusky, "it is the most important virtue displayed by a society" (Munoz, 1996). Joel Feinberg claims that justice consists in giving a person his or her own. The Roman view is that justice is to allocate to each their own. Mill (1972), claims that it involves people receiving their due, receiving that to which they have a right. What is inherent in all these definitions and views is the belief that justice implies whether or not people are appropriately rewarded (or dealt with) in all circumstances without fear or favor. Rawls (1971, 4) holds that "…justice is a set of principles required for choosing among the various social arrangements which determine the division of advantages and for underwriting an agreement on proper distributive shares."

Further, Mill and Bentham claim that *utility* is the main determinant of justice. Utilitarianism is tied to the 'greatest happiness' principle, in which case what is 'just' becomes that which amounts or subscribes to the greatest happiness of the greatest number of people. Like Mill, Ronald Dworkin (1973) claims that the main approach to justice is in the consideration of *rights.* Rights are not mere desires or wishes. They are one's dues, respected and recognized by law such that their infringements upon by others become an offence against the law. So, rights are entitlements. One's right, therefore, generates obligation in others. The obligation to one's rights by others accounts for one's desert.

The Holy Bible and Greek thoughts are the foundation references on the theory of *desert* as an approach to justice. Among the ancient Greeks, '*moira*' of the gods translates "a man's share or lots" and each was given his share by the gods (a kind of determinism). However, retribution *per se* does not consider the possibility of death of the offended before the repayments or indemnity. Significantly, freedom is necessary for justice. This, thus, equates justice with happiness. Yes, man seeks happiness in society. Justice, then, is a type of happiness guaranteed by the social order. Happiness must be understood as satisfaction

of certain needs recognized by the social authority, as needs worthy of being satisfied; a manifestation of men's desires accomplished on a social level.

Frankena (1975) explained that two things, A and B, are being allocated to two individuals, C and D in a way that A is given to C, and B to D. Whether justice is done depends on how A's being given to C compares with B's being given to D. In this sense, Aristotle was right in saying that justice involves a proportion in which A is to B as C is to D. It is a requirement both of reason and common thinking about justice that similar cases be treated similarly. That being so, justice is comparative, in which case it demands that if C and D are dissimilar, then A and B must be dissimilar. This explanation is particularly relevant to the contemporary Nigerian situation. If it is true that similar cases be treated similarly, it ought also to be that human beings be treated equally. Thus, to say that X is just is not simply saying that X has certain properties which are in fact *just*; but, rather that X is right in having these properties. So, the word, *just* has much of the force of *right*; at least, it has the force of *prima facie right,* and since the principles of justice are especially stringent, it may be said to have a modicum of the force of *actually right* so much so that we hesitate to say that an act is unjust if it violates a principle of justice but is made right via other moral considerations.

On his part, Kant (74) considers "…justice, then, is that order in which man can exist as a person, in which he can form his judgment about himself and the world…that order of existence in which man can participate in this world and carry on his work…." Kant therefore implies that justice has a divine foundation and an essence in human freedom. But the implication of this approach is that it could lead to subjectivism as against the community-based determination of norms.

Concerning the community, Munoz (1996, 82-83), avers that justice rules in a community or State when the three main forms of relationship between them, the three fundamental structures of social life are right; that is, disposed in their proper order. These forms are: first, the relations of individual to one another; second, those of the social whole to individuals, and third, those of individuals to the social whole. These three forms of social relationship correspond to the three main forms of justice: commutative, distributives, and legal or general justice. The social whole is the state, namely, the community in the highest degree. Judicial reasoning, is not, and perhaps should not be, a self-contained formalistic application of determinate laws in defined ways *per se*, but it is an exercise of practical and logical reasoning that is, or ought to be, fully open to moral, political, and social facts. The issue of justice underlies the idea of whether there ought to be distinction between law as it is and law as it ought to be; this point is contentious and remains an open one.

Generally, the views expressed above by the various philosophers have obvious and less obvious deficiencies. Concerning the idea of justice, Aristotle, Kant, and Rawls were clearly concerned with distributive and retributive justice and therefore did not go far enough in the analysis of the connotations of the concept; there were hardly any interest in general/legal justice. Although Pritchard, Appiah and Horton variously emphasized the role of symbols, spirits and their capacities to control humans, they fail to explain that the efficacy of an oath depends on human nature and being, a people's belief and conception of these as Asekhauno's (2006).

VI. Justice: The Leading Ideological-philosophical Conceptions

The following is rather a broad-spectrum classification of leading ideological conceptions of justice. For instance, Sterba (1986) gives a vivid account of five contemporary conceptions of justice. The ultimate political ideal (justice) for the *libertarian* is liberty; and this approves for private ownership but not a right to welfare. But libertarians are divided on whether their ideal supports a minimal or a watchman state. For instance, while Nozick (1974)[7] distinguished between patterned and unpattern notions of justice. While the former notion upholds distribution of goods and services along natural lines, following the principle of needs, and natural lines, the latter does not. In both, his principle is based on entitlement theory. Nozick, Rothbard (1977), Mack Eric (1977), and Ernest Levisohn are amongst the prominent proponents of libertarian justice. However, a leading alternative to libertarian criterion is welfare justice.

Welfare liberal justice is also known as egalitarian Justice. It holds that all men have certain basis equal rights. Egalitarian justice puts equality into the very contents of some of the most basic rules about men's rights and treatment. At a minimum, these rules provide that all men, irrespective of their different capacities or merits, should have equal freedom to pursue their goals without violence to other men, equal possession of the necessities of life, equal opportunity to develop and utilize their talents to the fullest possible extent, equality of political and civil rights, and so forth—including greater equalization of wealth and of actual political power. John Rawls and Ronald Dworkin are two well-known egalitarians.

Socialist justice takes equality as the ultimate political ideal and support a right to self-development but not to private property. Contemporary defenders include C.B. Macpherson and Kai Nielson. They have their origin in Karl Marx's vehement rejection of capitalist conceptions of justice. According to Macpherson (1977), liberal conception of justice is defective for it embodies a commitment to possessive individualism or utilitarianism. He holds that the right to self-development is consistent with only

socialism. But more recently, Macpherson has attempted to defend socialist justice by more broadly construing a right to property. Gould, (1978), Christian Bay (1981), and Kai Nielson (1985) are amongst other proponents of this approach.

Contenders of *perfectionist justice* believe in the Aristotelian moral foundation. According to Alasdair Mclntyre, this conception is devoid of any metaphysical connotation. To him, a virtue, such as courage, justice or honesty, is

> An acquired human quality the possession and exercise of which tends to enable us to achieve those goods which are internal to practices and the lack of which prevents us from achieving any such goods.[20]

Maclntyre (1981), John Finnis (1983), Galston (1980), are also proponents of this approach.

A distinctive feature noticeable about the *utilitarian criterion* of justice is that it offers not just a criterion of justice whereby institutional arrangements can be assessed, but also a criterion of morality whereby the actions of individuals can be evaluated. Utilitarians hold that:

> Actions are right in proportion, as they tend to promote happiness, wrong, as they tend to produce the reverse of happiness. By happiness is intended the pleasure and the absence of pain; by unhappiness (it is) pain, and the privation of pleasure.

Bentham disregarded the natural rights criterion of Nozick as nonsense and unacceptable. He objected to proprietary criterion and emphasized the need for human welfare, which he refers to as pleasure or happiness. Bentham also proposed that happiness or pleasure is what mankind cherishes and the reverse he frowns at. He found what he needed in the notion of human welfare which he refers to as pleasure or happiness, or, simply, "utility". Some utilitarians hold that the criterion for judging the moral worth of an action is whether it maximizes pleasure and minimizes pain. Others hold that the rightness of action depends on the amount of happiness over unhappiness produced where happiness is meant by the general welfare of mankind. Still others hold that this is too narrow and that an action must be judged not merely in terms of its resultant pleasure, but in terms of the amount of intrinsic goodness produced.[25] Critics have argued that utilitarianism lacks a principle of justice.

VII. Justice: Religious Stances

Justice in Christian Ethos It is necessary to situate human encounter of Christ and Christianity in a historical matrix. From Judea, Christianity (which required only water for baptism and merit of eternal life—a message heralded by Jesus Christ, born about 26 ad. who came as the expected messiah to pronounce God's kingdom to the world) grew. Christ and Christianity fascinated followers by his lowly life and magical actions. His central message was forgiveness, individual love for God in one's neighbor. The rest accounts and statements about Christian values are found in the bible and other proclamations by the Church. The Bible is replete with several scenario of justice, each indicative of alternative conceptions—retributive and fairness (initially), then forgiveness and grace (in the later sense). However, the term, justice encapsulates the essence of Christian laws and teachings; it is one word that describes the overriding values that permeate all Christian dictates and teachings. The idea of justice in Christian ethos could be summed up thus: that mortal man and his activities on earth are subservient to the ideals stipulated by some immortal God and His promise of ultimate reward for the faithful in a world hereafter. Hence Isaiah 30: 18 says God is a god of justice. However, all these accounts are simply essentially based on dessert and retribution, yet mostly coercive nature. But one must concede that retribution overrides justice in the Old Testament; the only fairness was "an eye for eye". Here, one may not dwell seriously on this conception since this old order does not meet what is here referred to as Christianity. Christianity is a religion that implies justice in all its dealings; thus it treats all people equally before the law regardless of being a slave, beggar, prince, or a noble man or a man of modest birth. The issue of equality is a core aspect of justice in Christianity, is not limited to merely declaration of principles and the establishment of laws. History has it that the principles and rules for justice are embedded in the parables/teachings of Christ solemnly and conscientiously—although the Apostles of Christianity in every respect, seemed to have married some principles of retribution and Christ's extoling forgiveness and conciliation. Fortunately, the Ten Commandments sum up the entire pedestal of both the old and new strands of Christian ethos. In all, one could note that that while Christ (in his numerous parables) based his essence of justice in God, the Church (following the early Christians who had interpreted Aristotle's philosophy and logic on its head to establish 1. a defense of God/creationism; and 2. the authority of God in the Church-dominated Empire) deferred to the monarchy and feudal lords. Theirs generated a newer approach to justice based on expedience and worldly aspirations (arising from the doctrine of purposefulness in nature, rest and prime motion) in the guise of spreading the word (Callinicos, 2010, p. 55). Like the Christian's, *Islamic* (and it's Oriental counterpart) conception of justice stresses *al Jana* (heaven) and possible re-union with the creator God; however, Buddhism and Hinduism also emphasizes karma.

*A*ccording to Ruch and Anyanwu, (1981, 146) the African world is one of participation between what "Western Philosophy considers as two distinct and partly separate worlds." African justice thrives on "the right", "right action", "due", "dessert", "conciliation" and "fairness in distribution" (Asekhauno, 2006). The route for justice among the Africans starts from self-help, through the family, various associations, village council, and finally oath and divinities. The process of securing justice is not rigid; one can move straight on to the village council or shrine depending on the perceived intensity of the case in point. Largely, justice, as conceived by the Africans is hinged on her macro conception of man as a being in relation with others, God and morality or natural law. Hence, the eternal law is nothing else than the plan of the divine wisdom considered as directing all the acts and motions of creatures. The violation of laws attracts grave sanctions. More so, a propitiatory rite must be performed. Uwemi (2009) points out that offenders are automatically interdicted from the society until the stain of their crime has been duly wiped away from the land—this view and practice is akin to the Igbo practice as recorded by Okafor (1983, 43-44). The utmost obligation among Africa is that to divine laws (Uwemi, 2009). Enforceability and sanction is an essential element in the positivist notion of law. One also must give away the fact that vivid account of African justice is simply based on the protection of rights, allocation of rewards/roles, adjudication and restoration (Asekhauno, 2006).

VIII. The United Nations (UN) on Justice

Today, the UN and its powers behind rule the world. It is necessary to present the objectives and principles behind its establishment as well as its organizational structures, in order to be acquainted with the socio-political trajectory and motive for its emergence. From its inception, the United Nations as an international mediator thus, has, *inter alia*, the following as its basic objectives.

1. To maintain international peace and security;
2. To develop friendly relations among nations based on respect for the principle of equal right and self-determination of peoples in promoting respect for human rights and fundamental freedoms;
3. To cooperate in resolving international economic, social, cultural and humanitarian problems; and
4. To be a Center for harmonizing the actions of nations in attaining these common ends.

Ever since, the United Nations developed and functions in accordance with the following principles:

1. a belief on the sovereignty and equality of all its members nations;

2. that all members nations are to fulfill in good faith their charter obligations;
3. that member nations are to settle their international disputes by peaceful means and without endangering international peace and security as well as justice;
4. that member nations are to refrain from the threat or use of force against any other state;
5. that member nations are to give the United Nations every assistance in any action it takes in accordance with the charter, and shall not assist states against which the United Nations is taking preventive or enforcement action;
6. that the United Nations shall ensure that states which are not members act in accordance with these principles in so far as it is necessary for the maintenance of international peace and security;
7. that nothing in the charter is to authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state (UN: 4-10).

The UN principles as presented above portray the fact that the original intention for the establishment of UN is to uphold justice and fair dealing among the nations of world. Among the core organs of the organization is the Security Council whose primary responsibility under the UN Charter is the maintenance of international peace and security. The Security Council has 15 members: 1. Five permanent members: China, France, the Russian Federation, the United Kingdom and the United States; 2. Ten elected by the General Assembly for two-year term. Each Council member has one vote. Decisions on procedural matters are made by an affirmative vote of at least nine of the fifteen members. Decisions on substantive matters require nine votes, including the concurring votes of all the five permanent members. This is the rule of "great power unanimity", often referred to as the "Veto Power". If a permanent member does not agree with a decision, it can cast a negative vote, and such action has power of veto. All the five permanent members have exercised the right of veto at one time or another in order to protect their interest but at the detriment of the weaker nations. However, if a permanent member does not support a decision but does not wish to block it through a veto, it may abstain. Under the Charter, all members of the United Nations agree to accept and carry out the decision of the Security Council. While other organs of the United Nations make recommendations to Governments, the Security Council alone has the power to take decisions which member states are obliged under the Charter to apply what they deem fit. What the Security Council deems fit is usually what its members consider consistent with the basic values of freedom and democracy, as if those have become universal values, without any socio-cultural considerations for traditions. Hence those values have been re-couched in different versions leading to the UN declaration of *Millennium Development Goals*, MDGs (2000), and

recently the *Sustainable Development Goals*, SDGs (2016). However, what has obtained seems to be a globalization of imperialist interests disguised as universal human values. The discretional pursuit on the principle, pursuit and expression of self-determination, the discriminatory application of her principles particularly on conflict intervention programs, the nasty implication of globalism amid widespread immorality mar the UN's as any ideal approach to justice.

IX. Conclusion

The concept of justice is eclectic, but its meaning and applicability is contentious, wide and varied among cultural, individual, religious, legal, and theoretical backgrounds. Despite the abundant views and literature on the subject, common alternative individual and ideological approaches in some way align, and in some instance conflicting. Today, the quest for justice transcends national bounds. Yet nationalism identity may remain a powerful, resilient force, and it could still dominate peoples' political identification.

In the world of justice (especially for us in Africa), efficacious oath system possesses some perseity embedded in the metaphysical (Asekhauno, 2006); a condition in which a thing is acting out of its own inner nature against the lures of human finitude (Blackburn: 282). Thus, despite its many conceptions, we shall, however, employ the term, justice to mean the ultimate telling/determination of truth, fair or correct application of rules, distribution of goods/services, allocation of roles/duties, rewards and punishments. Given that the term, justice is not an isolated concept; it has several ideas with which it is related and linked. The term is usually and commonly confused with some other but interrelated ones, including, importantly, liberty, equality, and morality. As Temisan' Ebijuwa (2006) points out, "the quest for an appropriate model for the reconstruction of political authority has become an imperative in many African states today…." Perhaps too, this is true because the existing (western) socio-political structures for ensuring social responsibility are (and have proved) "ineffective for the organization of our daily human affairs" and, therefore, have failed. We need, then, to engage in deliberate search and formulation of a workable and practicable scheme to address Africa's myriad but peculiar socio-economic and political woes—whether old or new institutions and schemes, as 'new past or old future'.

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