

JOHN RAWLS THEORY OF JUSTICE AS A PHILOSOPHICAL JUSTIFICATION OF FEDERAL CHARACTER PRINCIPLE IN NIGERIA

Odumegwu Andy Chukwuemeka & Ikechukwu Paul Ogugua
Philosophy Department Nnamdi Azikiwe University Awka

Abstract

John Rawls was a famous American Moral and political philosopher and a renowned advocate of social Justice. He was deeply concerned with how social goods can be equitably distributed among the members of the society. He postulated two basic principles of justice, namely, the First principle and the Second principle which he believed would be panacea to social injustice. There are obvious cases of social injustice in Nigeria resulting mainly from what has aptly been described as structural inequalities foisted on the peoples of Nigeria by British colonialists. These structural inequalities manifest in class, ethnic and religious cleavages which more often than not determine how one fares in Nigeria society. The federal character principle and quota system are public policies which were meant to address perceived social injustices and inequalities, ethnic and religious rivalry and domination in Nigeria public life. This article argues that John Rawls's theory of justice is a philosophical justification of federal character principle as an instrument of distributive justice in Nigeria federation. This thesis finds that the federal character principle is a fine idea justified by John Rawls's philosophy but often breached by governments at the federal, state and local levels. The methods of exposition and philosophical analysis have been employed in this research work. Our findings have shown that what is needed to make federal character principle effective is moral and political will on the part of the political leaders as there are legal remedies already for breach of these policies which are not deployed by leaders due to lack of moral and political will.

Introduction

The quest for social justice is a philosophical problem and, like all philosophical problems, it is a perennial problem. It never gets completely solved in any society. Every historical epoch has its peculiar problem of attaining social justice, depending on its level of social, economic, and political development. Little wonder, philosophers of all historical epochs have had to deal with the problem of achieving social justice.

In this paper, John Rawls theory of social justice is argued as a philosophical justification of Nigeria's federal character principle and quota system. John Rawls theory of justice is, according to its author, also called "justice as fairness". It is, according to Louis Pojman, probably the most important contribution to political philosophy in the twentieth century, one that both friends and foes must come to terms with¹.

John Rawls theory of justice as fairness is ably formulated and expounded in his magnum opus, *A Theory of Justice*. In order to ensure the moral efficacy of his theory of justice,

Rawls formulated a hypothetical contract theory in which the bargainers in the original position go behind “a veil of ignorance” to set up some fundamental agreements that would govern society. The attraction of the fundamental agreement is that it is made behind a veil of ignorance in that no one knows his or her place in the eventual society that would emerge: class, gender, race, religion, generation, social status, fortune in the distribution of natural assets, and abilities or even intelligence.

The use of veil of ignorance guarantees that when the parties choose the fundamental principles that would govern the society they do so as mutually disinterested (i.e they do not envy others for their good fortune), rationally self-interested agents because they do not know their respective position in the society they contract to form. Hence, Rawls argues that the choice of the basic principles or agreements that will govern their society was done in a condition of equality of all parties: “Certain principles of justice are justified because they would be agreed upon in a situation of equality”².

Rawl's theory of social justice is egalitarian distinguishing itself from utilitarian rivals by its focus on meeting individual needs rather than on aggregate or average welfare. This is why he argued that:

Each person possesses inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater goods shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the large sum of advantages enjoyed by the many. Therefore in a just society the liberties of equal citizenship are taken as settled, the rights secured by justice are not subject to political bargaining or the calculus of social interests³.

Rawls's aim in founding theory of justice is to achieve equal distribution of social goods among members of the society. The federal character principle and its related policy, quota system, were also conceived as public policies to achieve social justice and thereby achieve national integration, peace and unity among the peoples that comprise the Nigeria federation. This paper focuses only on the federal character policy. The need to conceive and introduce federal character principle as a public policy arose from the multi ethnic, multi-cultural and multi religious character of the country; the poor management of which resulted to ethnic rivalry, religious intolerance, social and political tension and violence with dire consequences for the continued existence of Nigeria as a federation. Severe inequalities between culturally-defined groups, so-called horizontal inequalities have been shown to significantly increase the risk of violent group relationships in diverse societies.⁴

The colonialism which brought about Nigeria forcedly amalgamated a large number of diverse ethnic groups into one political entity. Nigeria counts of hundreds of ethnic groups, although the three major groups, i.e. the Hausa-Fulani, the Yoruba and the Igbo are estimated to encompass about 60% of the population.⁵ Nigeria is also diverse in terms of religion with Christianity and Islam each being practiced by about half of the

population.

The post-civil era witnessed several efforts by the military regimes to address the sensitive issues of political inequality and ethnic denomination that had contributed to the collapse of the First Republic and the onset of the civil war with the specific aim to promote "national unity" and political stability⁶. These post-civil war efforts included a presidential system with a president who required the majority of the votes and at least a quarter of the votes in two-thirds of the states, the requirement that political parties had national character and the introduction of federal character principle and quota system.

The federal character principle was the creation of the Constitution Drafting Committee that was set up by the Mohammed/Obasanjo's military government in 1975. The principle was eventually included in the 1979 constitution in chapter two and is also retained in the 1999 constitution of Nigeria as Amended in Section 14(3) and (4) thus:

The composition of the Federal Government or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few state or from a few ethnic or other sectional groups in that Government or in any of its agencies

14(4) The composition of the Government of a state, a local government council or any of the agencies of such Government or council, and the conduct of the affairs of the Government or council or such agencies shall be carried out in such a manner as to recognize the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the people of the Federation⁷

A Digest of John Rawls's Theory of Justice

John Rawls's theory of Justice as fairness, though properly a political philosophy, derived its inspiration and life from Rawls's reflections and research on moral philosophy which he is widely credited with its revival as narrated by Andrews Reath as follows:

It is now common place to credit Rawls's work with the revitalization of moral philosophy that began in the early 1970s. By the late 1960s, moral philosophy was in danger of becoming sterile and trivial. The prevailing emphasis on the analysis of ethical concepts and "meta-ethical" issues had turned the attention of philosophers away from practical questions. Indeed, the constraints that linguistic analysis imposed on philosophical method, combined with the bias against normative and systematic thought that grew out of

ordinary language philosophy discouraged philosophers from addressing substantive questions about what is right or good and related traditional questions about the nature of persons, the content and function of the moral sentiments, and the structure of human relationships, in any sustained and systematic way. Against the background of the social and political turmoil of the 1960s and the pressing moral questions raised by the war in Vietnam, the meta-ethical concerns of analytic philosophers seemed increasingly scholastic and unsatisfying. As Bernard Williams complained in 1972 'Contemporary moral philosophy has found an original way of being boring, which is by not discussing moral issues at all'. Even where philosophers began to reflect on substantive issues, it was a widely held belief that no useful advances in moral theory were possible. In these conditions, the publication of *A Theory of Justice* came to many as a kind of revelation. As a systematic theoretical work with significant political and economic implications, *A Theory of Justice* showed how the distinctive methods of philosophy might be brought to bear on important political and economic questions⁸.

Rawls focused his moral thoughts on the political realm. Thus, all his life, he was interested in the question whether and to what extent human life is redeemable, whether it is possible for human beings, individually and collectively to live so that their lives are worth living. To answer this, he yet raises a further question: Or is it possible to envision a social world in which the collective life of human beings would be worthwhile? According to Rawls's intellectual biographer and former student and colleague, Thomas Pogge, this question is to be understood and answered in a realistic sense: It asks or requires us to envision the best social world within the context of the empirical conditions of this planet and of our human nature. It then turns out to be a question of whether we can envision a realistic utopia, an ideal social world that is reachable from the present on a plausible path of transition and, once reached, could sustain itself in its real context. Thus, Pogge goes on to say that Rawls, in his theory of Justice, has sought to show that the world is good at least in this respect of making a worthwhile collective life of human beings possible⁹.

Rawls's theory of justice came as a sharp reaction and denunciation of utilitarianism which was the dominant moral theory. In his essay titled "Two concepts of Rules", Rawls argued that the central idea of utilitarianism is that utility or happiness (understood as pleasure minus pain, desire satisfaction, or whatever) is the source of all moral value and that morality should, therefore, be concerned solely with raising the general happiness as high as possible. He further argues that applying this basic utilitarian idea to conduct, however, leads to implausible prescriptions: we should lie and break promises, and judges should convict defendants they know to be innocent, whenever such actions

produce more happiness than their alternatives. Such prescriptions, he maintained, run counter to commonsense morality, and perhaps even to happiness maximization itself: Lives lived among people seeking to maximize happiness would probably be less happy than ones lived among people generally observant of the constraints of commonsense morality⁹. Rawls as an equalitarian, focused on the individual welfare opposed utilitarian focus on aggregate or average welfare as one can see in the following quote from his book, *A Theory of Justice*:

Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the large sum of advantages enjoyed by the many. Therefore, in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or the calculus of social interests¹⁰.

In formulating his theory of justice, Rawls employed some concepts which he defined peculiarly in the context of his theory and also redefined some otherwise common concepts within that context. We will first consider his re-definition and use of the concepts “justice” and “institution”.

Rawls begins the first section of his most important book, *A Theory of Justice*, with the assertion that: “Justice is the first virtue of social institutions”¹¹. He went on to say that many other things can also be called just: wars, contracts, accusations, laws, demands, verdicts, honours, fate, or even the world. But Rawls uses the word in a narrower sense for the moral assessment of social institutions. This narrower sense is commonly marked by the expression “social justice” but he afterwards generally use “justice” and suppresses the adjective having made the context in which he uses it clear.

On the other hand, the word “institution” is often used for organized collective agents such as Harvard University or the World Bank. But this is not the sense in which Rawls uses the term “social institutions”. Instead, he employs the term to refer to the practices and rules that structure relationships and interactions among agents¹². This sense is exemplified by a social institution of promising. Its rules lay down what interactions between two agents count as creating a promise, what promisee conduct (if any) counts as releasing, the promisor from the promise, what circumstances (if any) can be invoked as a justification or excuse for nonperformance, and so on. In all cultures, there are also more complex social institutions structuring kinship relations, economic cooperation, criminal punishment, and political decision making, for example. Rawls concludes that the moral assessment of such practices and rules is the domain of social justice, while the moral assessment of individual and collective agents and of their conduct within some existing institutional scheme is the domain of ethics. These two domains are not mutually independent. The social institutions of a society have substantial influence on the options available to its members and even on the formation of their characters. And social

institutions, in turn are created, maintained, and changed through the conduct of individuals. It may thus appear impossible to treat one of these topics apart from the other.

Rawls, nevertheless, concentrates on the domain of social justice and more narrowly still, on how to assess a society's major social institutions, its *basic structure*. The concepts, "basic structure" is one of the concepts formulated and employed peculiarly in the context of his theory of justice which itself is a social contract theory like those of Thomas Hobbes and Jean Jacques Rousseau. Rawls holds that basic structure "comprises the main social institutions: the constitution, the economic regime, the legal order and its specification of property and the family in some form and provides the framework for a self-sufficient scheme of cooperation for all the essential purposes of human existence and how these institutions cohere into one unified system of social cooperation"¹³.

The Two Principles of Justice

Rawls calls his system "justice as fairness": a social order is to be accepted as just if and only if it could be the object of a fair agreement-- of an agreement that takes equal account of the interests of all the individuals who are to live under this social order. He seeks a contract on whose fairness all parties will agree. In effect, the parties to the contract should choose the kind of principles they could live with if their enemies were assigning them positions in society. Rawls argues that they would choose the following two principles:

1. Everyone will have an equal right to the most extensive basic liberties compatible with similar liberty for others.
2. Social and economic inequalities must satisfy two conditions:
 - (a) They are to the greatest benefit of the least advantaged (the difference principle)
 - (b) They are attached to positions open to all under conditions of fair equality of opportunity¹⁴.

The first principle applies specifically to the political order of a society and assesses it according to the extent to which it secures certain basic rights and liberties to its members. Rawls never distinguishes precisely between basic rights and basic liberties. He often refers only to basic liberties or to basic rights. He explicates the basic rights or liberties by a list which is based on historical experience and hence rather conventional¹⁵. It is also rather short, as Rawls seeks to include only the most important rights or liberties lest the special concern for these important ones be watered down or the priority of the first principle over the second be rendered implausible to the parties in the original position.

Turning to the second principle, we have seen that Rawls distinguished two parts of the basic structure: a society's political and legal order and its social and economic institutions. The latter are to be governed by Rawls's second principle of justice which states that "social and economic inequalities are to satisfy two conditions: (a) they are to be to the greatest benefit of the least advantaged members of society" and (b) they are to be attached to positions and offices open to all under conditions of fair equality of opportunity. Known as the difference and opportunity principles respectively, these two conditions are lexically ordered by Rawls such that the demands of the difference principle on socio-economic institutions are subject to the demand of fair equality.

The Difference Principle: The difference principle is the first arm of Rawls's second principle of justice and it makes the following demand on a society's basic structure or social order: "social and economic inequalities are to be to the greatest benefit of the least advantaged members of society". The basic structure must be such that no practicable alternative designs of it say coming from rival theories like utilitarianism would lead to a superior least advantaged socioeconomic position. Socioeconomic positions and inequalities are defined by the last three social primary goods" powers and prerogatives associated with professional positions, income and wealth, and residual social bases of self-respect. These are called index goods because an index of these basic goods is used for comparing representative socioeconomic positions. The difference principle is the most controversial of the principles of justice invented and propounded by Rawls in his famous theory of justice. Rawls founded it on the ideal of fraternity, of "not wanting to have greater advantages unless this is to the benefit of others who are less well off"¹⁶. He likens fraternity to the relationship in a family where members do not wish to gain unless they do so in ways that advance the interests of the other members. Those who have been favored by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out.

The Equal Opportunity Principle: The second arm of the second principle otherwise called the equal opportunity principle is restated here for its explication: social and economic inequalities are permissible if "they are attached to positions and offices open to all under conditions of fair equality of opportunity". The equal opportunity principle stipulates that the basic structure be designed so that any social and economic inequalities they generate are attached to positions and offices open to all under conditions of fair equality of opportunity. In other words, the equality of opportunity principle requires that "all have at least the same legal rights of access to all advantaged social positions"¹⁷.

By equality of opportunity principle, Rawls means not only that the law must not discriminate but also that it must forbid discriminatory rules imposed by other agents, such as a company policy of hiring only men. No one must be barred from competing for an educational or employment opportunity. Moreover, formal equality of opportunity is also meant to rule out discrimination in regard to the competition for positions. All citizens must not merely be entitled to apply for positions but must be entitled to compete for them on equal terms. Thus, formal equality of opportunity is violated when firms reserve a certain percentage of management positions for women or when blacks are given an advantage in gaining admission to universities. Rawls believes, however, that such affirmative action can nonetheless be justified temporarily as the best way of dealing with the effects of past unjust discrimination.

It is noteworthy that formal equality of opportunity does not mandate that positions be filled by lot. The qualifications of candidates, should, of course, be taken into account. Formal equality of opportunity also does not rule out high access fees (tuition) for higher education which skew the competition against the poor. Finally, formal equality of opportunity does not prohibit "age discrimination". Rules barring those older than thirty-five from admission to medical school, excluding those under forty from presidency, or requiring people to retire at age seventy--- such rules do not entail unequal life chances. The inequalities such rules create can be expected to advantage and disadvantage all citizens equally over the full course of their lives. Rawls also extends the application of

equal opportunity principle to firms, cooperatives, trade unions, guilds, associations, universities, and the whole public sector, constraining all personnel decisions and thus the selection of colleagues, suppliers, customers, members, students, and so on. But it does not apply to religious associations: It can be can legal discriminate against Buddhists, homosexuals, and women in filling a position of catholic bishop. Private clubs and societies (at least those in which business connections are forged only rarely) are nonetheless exempted from application of the principle¹⁸.

The Original Position: In the foregoing, Rawls's two principles of justice were explained. In this section, the contractual conditions under which the two principles were agreed upon by the hypothetical contractors or bargainers will be discussed. In *A Theory of Justice*, John Rawls sets forth a hypothetical contract theory in which the bargainers are in an initial, anonymous position of equality which he technically calls the “original position”. The bargainers in the original position go behind a veil of ignorance to devise a set of fundamental agreements that will govern society. He says “certain principles of justice are justified because they would be agreed upon in a situation of equality”¹⁹. Behind the metaphorical veil, no one knows his or her place in society, class, gender, race, religion, generation, and social status, fortune in the distribution of natural assets and abilities, or even intelligence. That is, each has a different idea of what makes life worth living, based on his or her moral or religious or aesthetic theories. For example, the millionaire has a conception of the good different from that of Trappist monk. This, information making up the “thick theory” of the good, could influence the contractor's deliberation, so it must be withheld. Those in the original position do have basic psychological knowledge about human nature, and have a common “thin theory” of the good: They know the primary goods -- the liberties, opportunities, wealth, income, and social bases of self-respect. These are fundamental values, for whatever else people want, they will rationally want these basic goods. The capitalist, the monk, the dancer, the garbage collector, and the philosopher will all value liberty and self-respect and a certain amount of wealth. Parties to the contract are to act as mutually disinterested (i.e., they don't envy others for their good fortune), rationally self-interested agents, and choose the basic principles that will govern their society. They have a specific task description: They are charged with agreeing on a public criterion of justice for the comparative assessment of practicable basic structure designs.

A Digest of Federal Character Principle

Nigeria's federal character principle is a product of Nigeria federalism which, in turn, is a product of British colonialism. There is no gainsaying the fact that what is known as Nigeria today existed as many independent heterogeneous societies or nations before the amalgamation of 1914 by Sir Frederick Lugard²⁰. In Nigerian context, amalgamation is a fusion of people of different ethnic or tribal origins, geographical, religious and cultural backgrounds to bear one name under a foreign, colonial government. This amalgamation has been described as “a forced brotherhood and sisterhood”²¹.

As a result, the country has since been faced with the challenges of “accommodating diversities, fostering inclusiveness and promoting national unity amongst its diverse ethnic groups that make up the Nigeria's “nation state.”²²This shows that the union was against the wishes of the forerunners of the various independent societies now referred to

as nationalists. This, they demonstrated through the loyalty and solidarity to their primordial ethnic origins than the newly born nation state called Nigeria. No wonder, one of the prominent nationalists in Nigeria, Chief Obafemi Awolowo described Nigeria as “a mere geographical expression”.²³

The search for national integration led to the adoption of some political techniques such as the quota system and federal character principle. Since its full adoption in 1979 constitution, the application of federal character principle has generated a lot of controversies in the polity and has become one of the most topical issues in Nigeria's political and administrative experience. The federal character principle is arguably seen as the best solution to solving some of the defects and fundamental problems of Nigerian lopsided federal system. The basis of the Nigerian federalism few years after independence was shaken and this culminated in the civil war from 1966-1970. Some of these problems were neither realized nor envisaged by some of our nationalists before independence. As noted earlier, these problems of national integration or unity and stability were created by the British amalgamation of ethnic groups with diverse cultures into a political union called Nigeria.

Thus, late General Murtala Mohammed muted the idea of introducing the federal character in his address to the opening session of the Constitution Drafting Committee on Saturday, 18th October 1975. According to the Constitution Drafting Committee (CDC) Report of 1977, federal character refers to:

The distinctive desire of the peoples of Nigeria to promote national unity, foster national loyalty and give every citizen of Nigeria a sense of belonging to the nation notwithstanding the diversities of ethnic origin, culture, language or religion which may exist and which it is their desire to nourish, harness to the enrichment of the Federal Republic of Nigeria²⁴.

The federal character principle is an effort to re-address the unbalanced structure and sectional domination in government with aim to achieve national integration. The principle arose out of the need to reduce ethnic conflict arising from competition for political power, government appointments, citing of federal industries and institutions, employment into federal establishments etc.²⁵ Infact, since the adoption of federal character principle in the 1979 federal constitution of Nigeria, the successive constitutions, the still born 1989 constitution and the current 1999 constitutions have retained the federal character principle as part of their provisions. It is in recognition of the necessity of the principle, that General Sani Abacha's military administration established the Federal Character Commission (FCC) in 1996 to regulate and supervise the implementation of the policy. Federal character principle aims at protecting the right of the minorities, accommodates the disadvantaged and ensures even distribution of resources among the various federating units as evident in section 14 (3) and (4) of the 1979 and 1999 constitutions of Nigeria, as repeated below, thus²⁶:

14(3) The composition of the Government of the federation or any of its agencies and conduct of its affairs shall be carried out in such a manner as to

reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional group in that government or any of its agencies.

14(4) The composition of the Government of a State, a local government council or any of the agencies of such Government or council, and the conduct of the affairs of the Government or council or such agencies shall be carried out in such manner as to recognize the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the people of the federation

The above provisions of federal character principle as enshrined in Nigeria constitution are one of the most contentious and debated constitutional innovations in Nigeria's administrative and political discourse. This explains why General Sani Abacha established the Federal Character Commission (FCC) in 1996 to monitor and enforce the implementation of federal character principle. Mustapha described the federal character principle as “unavoidable necessity forced on Nigerian national life by the cleavages and inequalities that have scarred the nation”.²⁷

The federal character commission (FCC) was created by Decree 1996 now FCC Act 1996 by the military regime of General Sani Abacha. The 1999 constitution included the FCC as one of the 14 independent federal executive bodies.

The FCC has two mandates as stated in section 4 of the FCC Act, 1996. The first mandate is to work out an equitable formula, subject to the approval of the president, for the distribution of posts in public service as well as political appointments. The second mandate as enshrined in section 4 subsection 1 (d) FCC Act, 1996 provides thus:

“To work out:

- i. An equitable formula, subject to the approval of the president for distribution of socio-economic services, amenities and infrastructural facilities.
- ii. Modalities and schemes subject to the approval of the president, for redressing the problems of imbalances and reducing the fear of relative deprivation and marginalization in the Nigerian system of federalism as it obtains in the public and private sector”.²⁸

The federal character commission is comprised of a chairman, a secretary and 37 commissioners representing the 36 states and the federal capital territory. The chairman, secretary and commissioners are appointed by the president upon confirmation by the National Assembly. However, the 36 states and federal capital territory each nominates a commissioner representing it in the commission. The FCC is supported by civil servant staff responsible for data gathering and monitoring, administration etc. The FCC has established 24 committees to monitor recruitments into 600 ministries, departments and agencies (MDA) of the federal government. The state branches of the FCC monitor states

and Local Government Areas (L.G.A) with particular emphasis on the provision of section 14(4) of the Constitution as stated above.

The employment distribution formula developed by the FCC is strictly based on geographical areas including geopolitical zones, states, local government councils and electoral wards, rather than ethnicity, religion and demography. Geopolitical zones are not formally recognized as administrative units in the constitution, but they are well-known and used for distributive purposes in the polity and FCC, therefore, uses the geographical zones arrangement. Nigeria has six geographical zones namely, North-Central, North-East, North-West, South-East, South-South, and South-West.

FCC uses zonal level formula when the number of employees in an institution is small. In such case, each zone should count for between 15 and 18% of the employees. However, no state should dominate in a zone. The approved formula for equitable distribution across states is that each state should produce 2.75% of the total work force, with an acceptable range of 2.5% to 3%. The FCT should take up 1%. At the state level, the ranges are dependent on the number of L.G.As in the state. At the L.G.A level, the ranges are dependent on the number of wards. At all geographical levels, exceptions exist for junior staff, which may take up 75% of a specific “catchment area” or the locality where the institution is based.

As part of its first mandate of equitable distribution of posts in public civil service and political appointments amongst the federating units, the federal character commission is also responsible for monitoring distribution of political appointments. In this regard, the FCC has not regularly published statistics on these positions, and following the controversy and debate on president Buhari's political appointments and perceived bias towards the North, the National Assembly has had to call on FCC to clarify the matter²⁹. The commission's website now provides data on political appointments but this is not often updated as Leila Demarest and her team of researchers noted³⁰.

Also it is important to observe that the implementation of federal character and its related policy, the quota system has not been a success story. It is in this light that Professor Anya O. Anya observed that the reason why the quota system and federal character principle have not improved the educational status of the North is because the northern elite have not put in their best to change the attitudinal disposition of their youths towards the viability of western education. Little wonder, Okobia argued that assessment of data on educational imbalance is staggering and that they convey devastating information³¹.

Thus, the continuing relevance and legitimacy of federal character and quota system has been called into question and generated a running national debate as its operation affects all public institutions across the country, including public universities, governing not only student admissions, but staff recruitment, appointments and promotions. The debate was given a new gusto when Nigeria's Vice-president was reported to have emphasized the importance of merit. At the conferment of the Nigerian National Order of Merit Award on two professors, environmental scientist Omowunmi Sadiq and poet Tanure Ojaide the Vice President said the nation had placed quota before merit which “we know does not work”³².

Rawls's Theory of Justice as a Philosophical Justification of Federal Character Principle

A digest of Rawls's theory of justice has been given above. The strand of his theory of justice which is proposed to be employed in this paper to proffer a philosophical justification of federal character principle is the second arm of his Second Principle of justice. The Second Principle of justice states that:

“Social and economic inequalities are to satisfy two conditions:

- (a) they are to be to the greatest benefits of the least advantaged members of society”.
- (b) they are to be attached to positions and offices open to all under conditions of fair equality of opportunity;

Known as the difference and equal opportunity principles respectively, these two conditions are lexically ordered by Rawls such that the demands of the difference principle on socio-economic institutions are subject to the demand of fair equality.

The second arm of the second principle which is also called the “equal opportunity principle” is the strand of Rawls's theory of justice which is employed in this paper to proffer a philosophical justification of federal character principle in Nigeria. The equal opportunity principle is re-stated and explicated here to keep it within one's attention as the evaluation goes on:

“Social and economic inequality is permissible if they are attached to positions and offices open to all under conditions of fair equality of opportunity”.

The equal opportunity principle stipulates that the basic structure or distributional profile, as Rawls also calls it, should be designed so that any social and economic inequalities they generate are attached to positions and offices open to all under conditions of fair equality of opportunity. In other words, the equality of opportunity principle requires that “all have at least the same legal rights of access to all advantaged social positions³³.”

By equality of opportunity principle, Rawls means not only that the law must not discriminate but also that it must forbid discriminatory rules imposed by other agents, such as a company policy of hiring only men. No one must be barred from competing for an educational or employment opportunity.

Moreover, formal equality of opportunity is also meant to rule out discrimination in regard to the competition for positions. All citizens must not merely be entitled to apply for positions but must be entitled to compete for them on equal terms.

The above explication of Rawls's equal opportunity principle boils down to the point that it upholds and advocates equality of citizens and equality of opportunity of all citizens to have right of access to advantaged positions in the society. The federal character principle enshrined in the Nigerian constitution is also an equal opportunity principle like that of Rawls. While Rawls's equal opportunity principle talks of equality of citizens and then equality of opportunity to access advantaged positions in society, Nigeria's federal character talks of equality of federating states or ethnic or other sectional groups and their equality of entitlement to the federal resources and appointments to positions in federal establishment.

Section 14 (3) of the 1999 constitution stipulates federal character thus:

The compositions of the Government of the federation or any of its agencies and conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that government or any of its agencies.³⁴

The federal character principle as reproduced above is a principle of even representation or equal representation of the component units of Nigeria federation in the distribution of federal resources and appointments in the first instance, among the 36 states and the federal capital territory which is treated as a state under the provision of section 299 of the constitution and, in the second instance, among the component units of a state. This latter provision on equal or even representation of component units of a state and Local Government Council in the distribution of resources and appointments of the state and the Local Government Council among the constituent units is also provided in section 14 (4) of the 1999 constitution.

It appears that the 50 wise men of the 1978 Constituent Assembly which recommended the inclusion of federal character principle in the 1979 constitution of Nigeria were either inspired by John Rawls's theory of justice or they stumbled on that idea by a happy fateful coincidence. This is because the federal character principle is both post facto and an exemplification of Rawls's equal opportunity principle. In his magnum opus, *A Theory of Justice*, Rawls assumed a society that is "well-ordered", relatively homogeneous in its basic moral beliefs and have broad agreement on what constitutes the good life. But in his later book, *Political Liberalism*, 1993 he avoids this assumption and accepts that incompatible and irreconcilable religious, philosophical and moral doctrines may coexist within a stable and just democratic society of free, equal citizens. This is why he raised in the preface to the book, *Political Liberalism*, the question:

How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical and moral doctrines?³⁵

Rawls's *Political Liberalism* was written in reaction to criticisms against *A Theory of Justice*. He answered the above question which he set as the central issue in *Political Liberalism* by expanding and expounding his argument in *A Theory of Justice*, that social justice can only be attained through the combined application of equality of opportunity principle and difference principle.

It is significant to note that the problem of cultural pluralism which Rawls's equal opportunity principle was invented to manage is the same problem that the federal character principle was invented to manage in Nigeria federation. Also the same way equal opportunity principle stemmed from Rawls's desire and search for stable and just society and indeed serves as a recipe for social and economic inequality, so also is the way

the federal character principle was introduced as a mechanism to manage Nigeria's diverse cultures and indeed also serves as a recipe for strong, united and just Nigeria as the Constitution Drafting Committee Report couched the *raison d'être* of federal character to be:

The distinct desire of the peoples of Nigeria to promote national unity, foster national loyalty and give every citizen of Nigeria a sense of belonging to the nation notwithstanding the diversities of ethnic origin, culture, language or religion which it is their desire to nourish, harness to the enrichment of the Federal Republic of Nigeria³⁶

Conclusion

The federal character principle is an instrument of social engineering aimed at ensuring social justice in ethnically and culturally diverse Federal Republic of Nigeria. The policy constitutes a sound political philosophy characteristically suited to a federal state as the political experiences of countries like United States, Canada, Australia and India have proved. Nonetheless, the policy has been confronted with many controversies and challenges so much that it is generally regarded with mixed feelings or reactions depending on which side of the cleavages of Nigeria one finds oneself.

The cause of the mixed feelings or reactions that are experienced any time matters of federal character is raised is not because it is ill-thought policy. Federal character principle is generally regarded as a fine idea which is blindly implemented without due revision or adjustment. What is more, this paper has shown that the ideas of federal character principle are justified and validated by no less philosophical system than that of one of the foremost political philosophers of the twentieth century, John Rawls. This paper has, therefore, provided a philosophical justification of federal character principle and thereby clearly distinguishes it from the writings of the social scientists and historians which dominate the discourse on federal character in Nigeria.

It remains to point out that the main reason for the mixed feelings or reactions which are evoked each time matters of federal character principle is mentioned is because of the obvious tension between merit and equity which the application of the policy has regrettably precipitated.

The fact that federal character principle is unavoidable necessity in the context of the country's diversities and level of socio-economic and political development does not mean or suggest it is costless for individuals and groups. What is required to realize effective and seamless implementation of federal character principle is that moral will and political will of leaders of the country should be trained and deployed to achieve such balancing of interests of the peoples of Nigeria for peace, stability and progress of Nigeria, an otherwise great black homeland in the world.

References

1. Louis P. Pojman, *Global Political Philosophy* (New York: McGraw Hill Co. 2003) P. 1 30
2. John Rawls, *A Theory of Justice*, Revised Edition (Massachusetts: The Belknap Press of Harvard University Press, 1999) P.2
3. John Rawls, Op. Cit. P.3
4. A. Langer, (2005) Horizontal Inequalities and Violent Group Mobilisation in Cote d'Ivoire. *Oxford Development Studies*, 33(1) 25-45 [Taylor & Francis Online]
5. A.R. Mustapha (2009) Institutionalizing Ethnic Representation: How Effective is the Federal Character Commission in Nigeria? *Journal of International Development* 21(4), 561-576[Google Scholar]
6. U. Ukiwo, (2005). The Study of Ethnicity in Nigeria. *Oxford Development Studies*, 33(1), 7-23 [Taylor & Francis Online]. [Google Scholar].
7. Constitution of the Federal Republic of Nigeria 1999 As Amended
8. Andrews Reath, Barbara Herman and Christine M. Korsgaard, *Reclaiming the History of Ethics: Essays for Rawls* (Cambridge: Cambridge University press. 1997),P.1
9. Thomas Pogge, *John Rawls: His Life and Theory of Justice* (London: Oxford University Press, 2007) p.vii
10. John Rawls Op. Cit. P. 4
11. John Rawls Op. Cit, P.5
12. John Rawls John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993) P.301
13. Thomas Pogge, Op. Cit.P.27
14. John Rawls , *A Theory of Justice* Revised Edition (Massachusetts: The Belknap Press of Harvard University Press, 1999) PP.302-3
15. John Rawls Op. Cit.P. 53
16. John Rawls, *A Theory of Justice*, Op. Cit. P.296
17. John Rawls Op. Cit P. 62
18. John Rawls Op. CitP. 63
19. John Rawls Op. CitP.21
20. Kayode Asaju.,A.. Samuel, and Mukaila,eds I. (2014). "Leadership Crises in Nigeria: the Urgent Need for Moral Education and Value Re-Orientation". *Public Administration Research Journal*; 3(1)117- 124.
21. O. O. Okolo (2014). Influence of Federal Character Principle on National Integration in Nigeria. *American International Journal of Contemporary Research*, 4(6)55-64.
22. Ibid.
23. J. N. Chukwuma, (2014). Federalism and Good Governance in Nigeria. Retrieved from www.academicexcellencesociety.com/Federalism_and_good_governance_in_ni

geria.html on 21/8/2014, 6-16

24. A. A. Ammani, (2014). "The Federal Character Principle as a Necessary Evil". Retrieved from www.gamji.com/article/800/news8603.htm on 20/8/2014 43-49
25. L.U Edigin,. (2010). Federal Character and National Stability in Nigeria 1979-2000. *Journal of Research in Nation Development* .8(2) 23-34
26. Constitution of the Federal Republic of Nigeria, 1999 .
27. A. R Mustapha, (2009). "Institutionalising Ethnic Representation: How Effective is the Federal Character Commission in Nigeria?" *Journal of International Development*, 21(4), 561–576.
28. Leila Demarest et al, "Nigeria's Federal Character Commission: A Critical Appraisal" In *Oxford Development Studies Journal* vol.48, issue 4pp. 315-328, published online 16 Feb. 2020.
29. Quoted from Leila Demarest et al. Op. Cit, Interviews conducted by the authors, July 10, 2018.
30. Leila Demarest et al. Op. Cit. P. 315
31. O.S. Okobia, "The Educational Imbalance between the Northern and Southern States of Nigeria: A Re-direction of Educational Policies" (online) Available from: <http://www.nuc.edu.ng/nucsite/file/ILs%>
32. Jackie Opara, "University Quota System- Pushing Fairness or Mediocrity" 10 February, 2017, *University World News*. P.30
33. John Rawls, *A Theory of Justice* Op. Cit P.62
34. Constitution of Federal Republic of Nigeria, 1999.
35. John Rawls John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993) P.1
36. A. A. Ammani, (2014). "The Federal Character Principle as a Necessary Evil". Retrieved from www.gamji.com/article/800/news8603.htm on 20/8/2014 43-49