

An Examination of John Finnis Theory of Justice and Its Relevance to Administration of Justice in Nigeria

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Abstract

This paper critically examines John Finnis's natural law theory of justice and its applicability to the Nigerian legal system. By exploring Finnis's dual concepts of distributive and commutative justice, the study highlights their potential to address challenges in resource allocation, contract law, and governance in Nigeria. The analysis emphasizes Finnis's commitment to practical reasonableness and the common good, drawing connections between his theoretical principles and Nigerian policies such as the Federal Character Commission and the National Cash Transfer Programme. While these principles align with efforts to promote equity and accountability, the study using doctrinal methodology identifies significant divergences, including the prevalence of corruption and systemic inequalities. Cases like *A.G. Federation v. A.G. Abia State* illustrate the complex interplay between distributive and commutative justice in Nigeria's federal system. The objective of the research is to test Nigeria's Justice Administration on the scale set by the modern Natural School of Jurisprudence particularly as postulated by John Finnis. The paper concludes with recommendations for adapting Finnis's framework to reform Nigerian laws, emphasizing the need for equitable resource distribution, robust consumer protections, and sustainable development initiatives. Despite practical challenges, Finnis's philosophy offers a compelling vision for a justice-oriented legal system capable of fostering human flourishing and societal cohesion in Nigeria.

Keywords: theory of Justice, Administration of Justice, John Finnis, Distributive and Commutative.

1.1 Introduction

This paper examines the legal philosophy of John Finnis, a prominent contemporary natural law theorist, with a focus on his theory of justice and its potential applications to the Nigerian legal system. Finnis's work, particularly his seminal text "Natural Law and Natural Rights" (1980), represents a significant revival and reinterpretation of natural law theory in the modern era. His approach, grounded in practical reasonableness and the pursuit of basic human goods, offers a nuanced framework for understanding justice that goes beyond simple notions of equality or utility.

The study begins by tracing the historical development of natural law theory, contextualizing Finnis's contributions within this broader tradition. It then delves into a detailed analysis of Finnis's conception of justice, exploring his distinctions between distributive and commutative justice and how these interact in real-world scenarios. The paper pays particular attention to Finnis's emphasis on the common good and his criteria for just distribution of resources and responsibilities within a community.

Following this theoretical exposition, the paper turns to the Nigerian context, examining how Finnis's ideas might inform and reshape various aspects of the country's legal and social systems. This analysis covers areas such as resource allocation, constitutional interpretation, contract law,

and social welfare programs. By applying Finnis's framework to concrete challenges facing Nigeria, the paper aims to bridge the gap between abstract philosophy and practical jurisprudence.

Finally, the study considers both the potential benefits and limitations of adopting Finnis's approach in the Nigerian legal landscape. It acknowledges the complexities and potential conflicts that arise when attempting to implement these ideas in a diverse and developing nation, while also highlighting the transformative potential of Finnis's vision of justice.

The paper seeks to contribute to ongoing debates about legal reform and development in Nigeria, offering Finnis's natural law theory as a possible philosophical foundation for creating a more just and equitable society.

1.2 Background on Natural Law School theory of Justice

The Natural Law School of thought has long been concerned with the concept of justice, evolving through various intellectual traditions over centuries. In ancient Greece, Aristotle laid the foundation for justice within this framework in his *Nicomachean Ethics*, where he identified three types of justice: distributive, corrective, and reciprocal. Distributive justice concerns the fair allocation of resources based on merit, corrective justice focuses on rectifying wrongs in interactions between individuals, and reciprocal justice governs fair exchanges.¹ In ancient Rome, Cicero expanded on these ideas, linking justice to natural law as an unchanging and eternal standard, emphasizing that true law is grounded in reason and universal principles.²

During the medieval period, Christian theologians like St. Augustine and St. Thomas Aquinas further developed these theories. Aquinas refined Aristotle's distinctions and introduced the concept of legal justice, which directed individual actions toward the common good. He emphasized that justice is a habit of giving each person their due, integrating both divine law and human reason.³ In the modern era, thinkers like Hugo Grotius and John Locke shifted the focus of justice toward natural rights. Grotius argued that justice was rational, universal, and independent of divine will, while Locke connected justice to inherent human rights such as life, liberty, and property, forming the foundation of just governance through the social contract.⁴

In contemporary times, John Finnis has revitalized Natural Law theory, particularly in his work *Natural Law and Natural Rights*. He ties justice to practical reasonableness, emphasizing respect for rights and the common good. Finnis distinguishes between general justice, which concerns promoting societal well-being, and particular justice, which includes distributive and commutative justice.⁵ The evolution of these concepts has shaped legal systems and ethical debates, reinforcing the role of justice in ensuring fairness and social order. As this discussion continues, the

¹Miller, F. (2017). Aristotle's Political Theory. In E. N. Zalta (Ed.), *The Stanford Encyclopedia of Philosophy* (Winter 2017 ed.). Stanford University.

²Bix, B. H. (2019). Natural law theory. In M. D. Dubber & T. Hörnle (Eds.), *The Oxford Handbook of Criminal Law* (pp. 1-23). Oxford University Press.

³Porter, J. (2016). *Justice as a Virtue: A Thomistic Perspective*. Eerdmans

⁴Grotius, H. (2012). *On the Law of War and Peace* (S. C. Neff, Ed.). Cambridge University Press. (Original work published 1625)

⁵Finnis, J. (2011). *Natural Law and Natural Rights* (2nd ed.). Oxford University Press.

contemporary relevance of Finnis's approach, particularly in relation to the administration of justice in Nigeria, will be analyzed.

1.4 John Finnis theory of Justice

Justice according to Finnis is situated within the broader context of practical reasonableness and common good. He posits that justice comprises of three essential elements: *other-directedness, duty, and equality*. Justice is inherently interpersonal, dealing with relationships between individuals. It involves what is owed or due to others, corresponding to their rights. Finnis suggests, that the concept of equality, should be understood flexibly, more as a sense of proportionality or balance rather than strict numerical equality.⁶

One is tempted to ask the question, how does one balance the duty aspect with equality when these two principles clash? Moreover, the emphasis on other-directedness might be controversial when viewed side by side with individualist perspective who believe in legitimately pursuing their self-interest.

Finnis distinguishes his approach from other prominent theories of justice. He argues that Unlike Rawls his theory does not limit Justice to societal institutions.⁷ He further argues that his theory is not restricted to relations between mature and free equals in political community like Aristotle did, rather there is the possibility of parents treating children unjustly. His theory is also broader than Hart's, extending beyond the principle of treating like cases alike rather Finnis's conception of justice is not restricted to ideal conditions of full compliance, making it more applicable to real-world scenarios. His theories include principles for assessing how one person ought to treat another (or how one person has a right to be treated), regardless of whether or not others are being so treated; for example forbidding torture in all cases and situations fits his principle of justice. He also argues that his theory is also broader than that of Rawls to the ideal conditions of a society in which everyone complies fully with the principles and institutions of justice. He undertakes to discuss a concept of Justice that will be applicable in terms of war, punishment, and civil obligation in face of unjust legislation, and about other situations of social breakdown and individual recalcitrance.⁸

Finnis first of all addresses Justice in its general form where he posits that General Justice emanated from the concept of common good which involves always doing what is best (through practical reasonableness) for everyone, not just for oneself or friends. He sees General Justice as one of the essential elements of Practical reasonableness. And its elements remain the three elements of *other-directedness, duty, and equality*.⁹

John Finnis classifies justice into two main categories: distributive and commutative. Distributive justice focuses on the fair allocation of common resources, opportunities, and responsibilities within a community, while commutative justice governs interactions between individuals and groups where shared resources are not directly involved. Finnis further distinguishes distributive justice by identifying two key subject areas: natural resources that benefit everyone and the

⁶ Finnis, J. (2011). *Natural Law and Natural Rights* (2nd ed.). Oxford University Press. pp 161-163

⁷ Finnis, J. (2011). *Natural Law and Natural Rights* (2nd ed.). Oxford University Press 164-167

⁸ Ibid

⁹ ibid

outcomes of collective efforts, which he refers to as the "common stock" and "incidents of communal enterprise." These include resources, opportunities, profits, roles, responsibilities, and taxes, providing a structured approach to understanding justice in society.¹⁰

The key characteristic of these elements is that they do not serve the common good until they are appropriated or assigned to particular individuals. Distributive justice is concerned with how to fairly and effectively allocate these common elements among community members.¹¹

He admits that distributive justice also allows for private property, as it promotes personal autonomy and typically leads to more efficient resource use. However, Finnis is warned that private ownership is not absolute and comes with responsibilities to the broader community which comes in form of taxes and other levies, such as ground rent.

Though there is an attempt to forcefully create a compromise between private and communal rights, the practical implementation of Finnis's Idea of 'responsibilities to the broader community' remains a challenge in our society that is deeply entrenched in the notion of absolute property rights.¹²

Throughout his analysis, Finnis emphasizes that the common good is not separate from individual wellbeing. Common enterprises should ultimately benefit individual community members. He introduces the principle of subsidiarity, arguing that it is unjust to force individuals into public enterprises if they can effectively help themselves through private efforts without harming the common good.¹³

Finnis then outlines two main categories of common subject-matter relevant to distributive justice, he started with (A) *Natural Commons*: These are resources that are not owned by any individual and were not created by anyone, but can benefit everyone. Examples; solar energy and light, the sea, its bed, and contents, land and its contents, rivers, air and airspace, the moon. And then there is the (B) *Collaborative Commons*: These arise from individuals' willingness to work together to improve their situation. Finnis provides an example of a community facing external threats or natural disasters and they have to distribute their roles in rescuing themselves. This type of common subject-matter involves two aspects: (B1) Organizational Aspects; Deciding what to do and how, participating in specific projects and contributing necessary resources or funds. And there is (B2) Tangible Products of Collaboration: City walls and weapons, Sea walls or dykes, Drainage systems and hospitals, Communal harvests.¹⁴

Finnis refers to the natural resources in (A) and the products in (B2) as "*common stock*," while he calls the organizational aspects in (B1) "*incidents of communal enterprise*."¹⁵

¹⁰ *ibid*

¹¹ *Ibid*

¹² *ibid*

¹³ *Ibid* p177

¹⁴ Finnis, J. (2011). *Natural Law and Natural Rights* (2nd ed.). Oxford University Press p. 177

¹⁵ Gardner, J. (2013). Finnis on Justice. *Reason, Morality, and Law: The Philosophy of John Finnis*, p. 151.

Though these matters are common, they cannot be beneficial unless they are appropriated to particular persons (or in some cases, to everyone in the community, including strangers).

The next problem addressed by Finnis regarding distributive justice, is determining to whom and under what conditions this appropriation should be made.

The criteria for Distributive Justice according to Finnis is multifaceted and there is no single universally applicable criterion for distribution. He argues that though Equality has a critical role in distributive justice It is outweighed by other criteria and only applies when these other criteria are inapplicable or inconclusive. The ultimate goal of justice is not equality itself, but the common good and the flourishing of all community members.¹⁶

He further argues that wealth disparities are unjust not because of inequality itself, but because the wealthy have failed to redistribute wealth that could better serve others' basic needs, thus redistribution among high net-worth individuals and low net-worth individuals is essential for the common good. Though Finnis distinguishes between redistribution that merely leads to more beer consumption and less fine wine consumption, which is not a demand of justice whereas if redistribution leads to preventing illness, enabling education for self-direction, or defending against injustice, then it is a requirement of justice.¹⁷

He then outlines several other criteria for distribution: a) Need: Give resources to those who need them most for basic survival and well-being. Except those who refuse to help themselves or are being punished for bad behaviour. b) Function: Distribute resources based on people's roles and responsibilities in the community for example a leader might need more resources to perform their job effectively. c) Capacity: Give resources to those who can use them best. For example, provide higher education to those who can benefit from it. This Justifies the concept of merit scholarship d) Deserts and Contributions: Reward people for their efforts and contributions to the community. This encourages gratitude and motivates people to contribute more. Finnis argues that the gratitude expressed here is a great human good. e) Risk Creation and Acceptance: When distributing costs or losses, consider who took or accepted risks knowingly. Those who knowingly took risks should bear more of the costs if things go wrong.¹⁸

Finnis argues that Individuals have responsibilities to Justice base on the criteria, which may arise from their Voluntary commitments, Past or present receipt of benefits, others' dependence on them, Networks of actual and potential interdependencies. Accordingly, if an individual has more than he needs then he as the responsibility to help others base on the Need criterion. An individual in a leadership role has the responsibilities that come with that position base on Function criterion. Those with special skills should use them for the community's benefit base on Capacity criterion. Individuals that received benefits from others have a responsibility to give back base on Deserts and Contributions criterion. Individuals that knowingly took risks should be responsible for the consequences. (Risk Creation criterion).¹⁹

¹⁶ Osina, P. (2016). John Finnis on Law and Justice. *Studia Iuridica Cassoviensia*, 4, p 122.

¹⁷ *ibid*

¹⁸ Finnis, J. (2013). The Priority of Persons Revisited. *The American Journal of Jurisprudence*, 58(1), pp 45-62.

¹⁹ *ibid*

Finnis emphasizes that there are no precise yardsticks for applying these criteria. The flourishing of human beings in community is complex and multi-faceted, and no single criterion can universally resolve all questions of distribution.

He also stresses that these criteria should be considered in light of what practical reasonableness requires of particular people in their specific circumstances and relationships. Thus, distributive justice is not about applying abstract rules, but about making reasonable judgments in concrete situations.²⁰

In my opinion, the lack of a clear hierarchy among these criteria could lead to inconsistent and unpredictable application. Furthermore, his rejection of equality as a primary criterion, might be seen as potentially justifying significant societal inequalities if other criteria are prioritized. And the lack of hierarchy can be said to have created an endless loop that is of little meaning to a practical person.

Finnis agrees with Aristotle that we cannot have precision in matters of practical reasoning (ethics). This suggests that moral decisions often involve context that resist simple, universal rules.

He argues against Weber, Sartre, of the relativist schools, and others who argue that objective or rational judgments are impossible in ethics and politics. He argues that these thinkers often base their arguments on the difficulty of resolving conflicts between different moral responsibilities. He mentions Sartre's famous example of a young man torn between staying home to care for his elderly mother and leaving to fight against Nazi occupation. This dilemma is meant to illustrate the impossibility of making an objectively "right" choice. Finnis argues that such dilemmas is not a proof of the impossibility of objective moral reasoning. He suggests that: a) Both choices (staying with the mother or fighting Nazis) could be compatible with justice. b) The dilemma cannot be solved by declaring one option the only reasonable choice. Though there are many other unreasonable choices that the young man is ignoring, such as killing his mother or simply drinking himself to stupor or joining the enemy forces and that is practical reasonableness working for the young man. There are clearly unreasonable or immoral choices, even if we cannot always determine a single "right" answer in difficult dilemmas.²¹

He further criticized Utilitarianism on their view that everyone should care equally about everyone else in the world. Suggesting that we have the same responsibility to a stranger on the other side of the world as we do to our own family. On the contrary Finnis thinks this view is unrealistic and not how people actually live. He points out that we have special relationships (like family, friends, community) that naturally make us care more about some people than others. It is not practical or reasonable to care equally about everyone.²²

²⁰ Finnis, J. (1990). Allocating risks and suffering: Some hidden traps. *Clev. St. L. Rev.*, 38, 193.

²¹ Finnis, J. (2011). *Natural Law and Natural Rights* (2nd ed.). Oxford University Press p. 177

²² Finnis, J. (2011). *Philosophy of law: Collected essays volume IV* (Vol. 4). Oxford University Press.

This led Finnis to the discourse on international law wherein he admitted that figuring out how to be just on a global scale is very hard. We naturally tend to favor ourselves and our own groups, and sometimes we just do not care enough about people far away. But to be truly just, we need to recognize and try to overcome these tendencies.

1.5 Commutative Justice

Finnis chose to adopt the term commutative justice simply because he could not find a better English word that will capture the exact scope of the concept he has in mind. Any other transaction between individuals (including with officials) that is not about distribution should fall under commutative justice. Commutative Justice theory is necessary to answer questions of what is fitting, fair, or just as between the parties to a relationship.²³

Finnis discussed Aristotle's concept of Corrective Justice which could be voluntary dealing²⁴ or involuntary dealing²⁵. Finnis argues that the main issue with Aristotle's account is that it focuses too much on correction and remedying inequalities when one person harms or takes from another, or when one party fulfills their side of an agreement while the other does not. This leaves many issues unaddressed he argues.²⁶

Finnis argues that Aquinas's idea of 'commutative justice' is broader. It is not just about fixing wrongs or dealing with buying and selling. Instead, it covers almost all types of interactions between people or groups. This big idea helps us think about what is fair in many different situations. It does not include sharing out common resources, but it covers everything else about how people should treat each other fairly. This way of thinking about justice is helpful because it lets us look at fairness in many different parts of life, not just in business or when someone does something wrong.²⁷

Finnis argues that Distributive and commutative justice often work together in real life. They are not always separate. Many actions can be both *distributively* and *commutatively* just (or unjust). For example, when a judge makes a decision, they might be dealing with both types of justice at once. The judge's job itself is always about distributive justice because they are dividing something (like who wins a case) between people. But the judge also has to follow the law correctly, which is about commutative justice.²⁸

Finnis admits that sometimes it is hard to tell if a law is meant to be distributive or commutative. For example, modern laws about accidents and injuries have changed. They used to be mostly about commutative justice - making someone pay if they did something wrong. Now, they are often more about distributive justice - sharing the risks of everyday life among everyone. This new

²³ Finnis, J. (2011). *Natural Law and Natural Rights* (2nd ed.). Oxford University Press p. 178

²⁴ Such as sale, hire, and other business transactions.

²⁵ Such as where one man 'deals with' another by stealing from him, murdering him, or defaming him.

²⁶ *Ibid*

²⁷ Finnis, J. (2011). *Natural Law and Natural Rights* (2nd ed.). Oxford University Press p. 179

²⁸ Gardner, J. (2013). Finnis on Justice. *Reason, Morality, and Law: The Philosophy of John Finnis*, 151.

way of thinking is like everyone in society sharing insurance for accidents, instead of just punishing people who make mistakes.²⁹

According to Finnis this change means that now, more people might get some help if they are injured, but they might get less money than before. The old way of doing things still exists, but it is not enforced by law anymore. If this new way is used where it does not fit well, some people who get hurt might feel they are not getting proper justice.³⁰

Finnis explains the complex relationship between commutative and distributive justice using the evolution of contract law. Traditionally, contract disputes were resolved by holding the at-fault party responsible for paying damages or restitution, which aligns with commutative justice. However, modern approaches have introduced elements of distributive justice by allowing both parties to share some of the risks when things go wrong. Similarly, the doctrine of frustration in contract law applies distributive justice principles by ensuring that costs are fairly shared between both parties instead of placing the entire burden on one side.³¹

Finnis argues that distributive justice thinking is to be applied at workplace accidents, where it made sense to think of workers and bosses as part of a shared project (distributive justice). But it is harder to apply this idea to a whole country for all types of accidents (which would be a very broad application of distributive justice).³²

Finnis shows how commutative and distributive justice work together in the relationship between individuals and the government. People have commutative justice duties to follow laws and be honest in court. The government has commutative justice duties to run systems fairly, but these systems (like taxes and welfare) are often based on distributive justice principles.³³

Finnis's broad definition of commutative justice presents a challenge in developing clear principles for its application in specific contexts, as categorizing all human relationships outside distributive justice under commutative justice can be complex. The difficulty of determining when and how to apply each type of justice will continue to fuel academic discourse within the Natural Law School. Since fairness often involves both distributive and commutative justice, balancing individual responsibility with the fair distribution of risks and benefits remains a fundamental task for legal and social systems. While Finnis's framework offers valuable philosophical insights, its practical application in legal systems may be difficult due to the need for clear categorizations. Therefore, a more pragmatic approach that prioritizes practical reasonableness in determining justice for the common good, despite the risk of subjectivity, may be preferable.

²⁹ Finnis, J. (2011). *Natural Law and Natural Rights* (2nd ed.). Oxford University Press p. 179

³⁰ Ibid

³¹ Ibid

³² Ibid

³³ Osina, P. (2016). John Finnis on Law and Justice. *Studia Iuridica Cassoviensia*, 4, 122.

1.7 Relevance to Administration of Justice in Nigeria.

Finnis's theories of justice are relevant to the Nigerian legal system and society. The theory could be seen in every facet of life in Nigeria and also it could be seen in almost all the proposals being made by pundits on how to improve the general well-being of Nigerians. There are also several challenges in the implementation of these theories due to the complex realities of Nigeria. Finnis ideas can be the philosophical foundation upon which Nigeria's reform efforts could be based albeit with great caution when being adapted to the Nigerian context. With sustained effort and commitment though, Finnis's framework could help orient Nigeria towards a more just and equitable future. We will analyse how his theories have worked positively in Nigeria, how these ideas have been violated and also how these ideas could propel Nigeria to a prosperous future. In the process we will highlight the challenges that will come along with the implementation.

1.7.1 Distributive Justice in Nigerian Society

Finnis's ideas on distributive justice, which concern the allocation of common resources and responsibilities, are relevant in the Nigerian socio-economic context. Nigeria has vast natural resource wealth, but also high level of poverty and inequality. Finnis argues that the common good requires resources to be distributed based on criteria like need, function, capacity, desert, and risk, not just equality.

Applying this to Nigeria would mean directing more resources to the most marginalized to meet their basic needs, while also rewarding those who contribute productively to society. The "actual and potential interdependencies" Finnis describes are stark in Nigeria - the fates of the rich and poor are inextricably linked.

Finnis's ideas shape policies that balance merit and need, which is necessary to tackle the disparities in wealth and opportunities among citizens or even states of the federation. By virtue of section 160 (2) of the CRFN,

The President, upon the receipt of advice from the Revenue Mobilisation Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density.

This leads to more equitable resource allocation, ensuring that merit is rewarded base on revenue generation, and the needs of population density are addressed in the derivation of the formular for resource allocation.

The National Cash Transfer Programme in Nigeria is a prime example of the application of Finnis's theory of distributive justice in practice. The programme aims to distribute common resources (in this case, financial support) to the poorest and most vulnerable households in Nigeria, which aligns with Finnis's principle that resources should be allocated based on need. By targeting households from the National Social Register, the programme attempts to ensure that the distribution is fair and reaches those who require it the most. Furthermore, the programme's objectives of improving household consumption, health, education, and livelihood support demonstrate a commitment to

promoting the common good and the flourishing of all community members, which is a central tenet of Finnis's theory of distributive justice. The programme's implementation through State Cash Transfer Units and local government teams also reflects Finnis's principle of subsidiarity, which holds that issues should be handled at the most local level possible, as long as it does not undermine the common good.³⁴

The Federal Character Commission (FCC) and the quota system in Nigeria are also examples of distributive justice in action, as they aim to ensure fair representation and distribution of resources among the various ethnic, linguistic, and geographic entities in the country.

The Federal Character Commission was established to enforce the federal character principle, which seeks to ensure that appointments to public service institutions fairly reflect the linguistic, ethnic, religious, and geographic diversity of the country.³⁵ This aligns with Finnis's notion that distributive justice should consider factors beyond mere equality, such as function and capacity, to promote the common good.

Similarly, the quota system in Nigeria is designed to ensure equitable distribution of resources, opportunities, and representation among the different states and regions of the country. For example, in education, the quota system is used to allocate admission slots in federal government-owned schools to ensure that each state has a fair representation.³⁶ This resonates with Finnis's idea that distributive justice should consider the specific needs and circumstances of different groups within a community.

However, the implementation of these policies has faced challenges, such as allegations of favoritism, nepotism, and corruption, which can undermine the intended goals of distributive justice. Critics argue that these policies sometimes prioritize group identity over individual merit.³⁷ Despite Finnis numerous assurances that his philosophical principles meet the practical reasonableness standard and are of common good, a substantial percentage of Nigerians are not comfortable with this arrangement and it has caused several tensions in all National discourse.

Finnis's framework is complex and relies heavily on "practical reasonableness," which can be subjective contrary to the assertion of Finis. Translating his principles into concrete policies in a country as diverse as Nigeria remains challenging and contentious. Different groups may have very different views on what the common good entails and how to weigh different distributive criteria. Though arguably, it might have been the only reason keeping Nigeria together. One would not know without the experimentation of canceling the policies.

³⁴ National Social Safety Nets Coordinating Office. (n.d.). *National Cash Transfer Programme*. National Social Safety Nets Project (NASSP). <https://nassp.gov.ng/national-cash-transfer-programme/> (accessed May 10, 2023).

³⁵ Federal Character Commission. (2020). *About FCC*. <https://federalcharacter.gov.ng/about-fcc/> (accessed September 11, 2024). Also see Section 4(1) a of the Federal Character Commission Establishment Act CAP F7 LFN 2004.

³⁶ Omebe, C. A. (2014). *Quota System in Nigeria: An Engine or a Brake on the Wheel of Progress?* International Journal of Development and Management Review, 9(1), 133-142. <https://www.ajol.info/index.php/ijdmr/article/view/104376> (accessed September 11, 2024).

³⁷ Adeosun, A. B., & Adesina, J. O. (2020). *The Politics of Federal Character and National Integration in Nigeria*. Journal of Politics and Governance, 9(2), 1-12. <https://www.jpgjournal.com/article/view/447> (accessed September 11, 2024)

Conversely, the bogus salary structure of political office holders in Nigeria may be said to violate the principles of distributive justice as articulated by John Finnis. According to Finnis, distributive justice involves allocating common resources based on factors such as need, function, capacity, desert, and the promotion of the common good.³⁸ However, the current salary structure in Nigeria appears to prioritize self-interest over genuine need, reward personal gain over public service, exacerbate inequality, and create perverse incentives for corruption.³⁹ This prevents the fair distribution of resources and the wellbeing of the general population.⁴⁰ The high salaries of politicians limit the resources available for essential public services and contribute to a widening gap between the rich and the poor, going against the principle of promoting the common good.⁴¹ Reforming this system is crucial for aligning with the principles of distributive justice and creating a more just and equitable society in Nigeria.

1.7.2 Commutative Justice in Nigerian Legal System

Finnis's expansive view of commutative justice, covering all interpersonal dealings besides distribution of common resources, is relevant to Administration of Nigeria in so many aspects. Finnis idea of commutative justice supports laws around contract enforcement, such as the doctrine of specific performance⁴² and the bindingness of contract⁴³, consumer protection and fair business practices⁴⁴. All dealings, including murder, defamation, theft fall under the commutative justice. Commutative justice demands that parties to an agreement or even without an agreement must treat each other fairly, fulfill their respective agreed or implied obligations, and remedy any breaches appropriately.

In the Nigerian context, this could mean closely scrutinizing contracts for unfair terms, especially when there are power imbalances between the parties. It may require a more expansive view of unconscionability and stronger protections for weaker parties, such as the principle of *non est factum* as stated in *Natsaha v. State*⁴⁵

Non est factum means, "It is not his deed." That is a denial of the execution of an instrument. Non est factum can be general, special or verified. A general non est factum is a broad, nonspecific denial that an instrument was executed or executed improperly. Special non est factum refers to a pleading that specifies ground on which an instrument's execution is invalid or nonbinding. This is also referred to as particular non est factum, Verified non est factum, on the other hand, is a sworn denial that puts the validity of the instrument as well as the signature on it in question.⁴⁶

³⁸ Finnis, J. (2011). *Natural Law and Natural Rights* (2nd ed.). Oxford University Press.

³⁹ Olasupo, F. A., & Fayomi, I. O. (2012). The Corruption of Party Politics in Nigeria: The Real Issues and Challenges for the Anti-Corruption Crusade. *International Journal of Politics and Good Governance*, 3(3), 1-23. <http://www.onlineresearchjournals.com/ijopagg/art/113.pdf> (accessed September 11, 2024).

⁴⁰ Bakare, A. S. (2021). Examining the Distributional Impact of Government Spending in Nigeria. *Journal of Economics and Sustainable Development*, 12(6), 1-11. <https://core.ac.uk/download/pdf/236408405.pdf> (accessed September 11, 2024).

⁴¹ Adegbite, E. O. (2020). The Political Economy of the Jumbo Pay for Nigerian Legislators. *Journal of African Political Economy and Development*, 5(2), 1-16. <https://journals.co.za/doi/abs/10.10520/EJC-1e0a5f3d41> (accessed September 11, 2024).

⁴² See *Ibekwe v. Nwosu* (2011) LPELR-1391(SC) (pp. 10-11 paras. D)

⁴³ See *Makwe v. Nwukor & Anor* (2001) LPELR-1830(SC) (Pp. 26 paras. E)

⁴⁴ Consumer Protection Council Act CAP C25 LFN 2004

⁴⁵ (2013) LPELR-22601(CA) (Pp. 21 paras. A)

⁴⁶ Per BELGORE, J.C.A in *Natsaha v. State* (2013) LPELR-22601(CA) (pp. 21 paras. A).

Courts usually look beyond the strict letter of agreements to consider the underlying equity of the arrangement. An interesting situation arose in the case of *MTN(Nig.)Comm.Ltd.v.C.C.Inv.Ltd*⁴⁷ where MTN prepared a trade agreement and sent it to Corporate Communications to sign, which they did. However, MTN then failed to sign the document themselves. Later, MTN attempted to terminate the agreement, claiming it was not valid because they had not signed it.

The court ruled in favor of Corporate Communications, demonstrating commutative justice principles in Nigerian contract law. All the courts from the High Court, to the Court of Appeal and the Supreme Court, determined that MTN could not benefit from their own failure to sign a document they had prepared and acted upon. This shows how Nigerian courts may prioritize fairness and the actual conduct of parties over strict legal formalities in commercial disputes. The decision reflects an approach to commutative justice that aims to balance power dynamics between large corporations and smaller business partners, ensuring that technical oversights or deliberate omissions cannot be used to unfairly disadvantage one party in a business relationship. This also conforms with the principle of practical reasonableness in decision making.

However, it is opined that overemphasis on commutative justice could lead to excessive judicial intervention in contracts. It might create uncertainty and deter people from entering into agreements for fear their terms may be overridden. Therefore, Nigeria's Justice Administrators will have to always strike the right balance between freedom of contract and commutative fairness.

Finnis's theory also has relevance to regulatory bodies in policing unethical business practices and remedying power imbalances in the marketplace.

For example, cases of fraud, misrepresentation, or abuse of market power could be seen not just as wrongs to be corrected, but as broader threats to commutative justice that require action. This might justify more robust consumer protection laws through agencies such as the CPC⁴⁸, NAFDAC⁴⁹, NCC⁵⁰, CBN⁵¹ etc. Efforts by these agencies to ensure fair dealings between big corporations and individuals are overwhelming.

1.7.3 Complex Relationship Between Distributive Justice and Commutative Justice.

We have discussed how Finnis argues that these two forms of justice often overlap and interact in real-world scenarios. He suggests that many actions can be both distributively and commutatively just (or unjust). This complex relationship, as Finnis describes it, means that achieving justice often requires balancing both distributive and commutative considerations. It is not always possible to clearly separate the two, and attempts to apply one form of justice might have implications for the other. A real-life scenario played itself in the recent case of *AG Federation v AG Abia State and Ors*⁵² the case arose from a dispute between the Federal Government and the 36 state governments over the control and disbursement of local government funds. The Federal Government sought to

⁴⁷ (2019) 9 NWLR (Pt. 1678) 427

⁴⁸ Consumer Protection Council

⁴⁹ National Agency for Food and Drug Administration and Control

⁵⁰ Nigerian Communications Commission

⁵¹ Central Bank of Nigeria

⁵² (2024) LPELR-62576(SC)

enforce direct allocation of funds to local governments, bypassing state control, while states argued for maintaining the existing system of joint state-local government accounts. The case centered on interpreting constitutional provisions related to local government autonomy and fiscal federalism. presents a complex interplay between distributive and commutative justice within Nigeria's federal system. This case illuminates the tension between these two forms of justice and their application in governance and resource allocation.

From a distributive justice perspective, the Supreme Court's ensured a more equitable distribution of resources to local governments. By mandating direct disbursement of federal allocations to local governments, the court addressed the historical imbalance where state governments often intercepted and potentially misused funds meant for local development. This aligns with distributive justice principles of fair allocation of societal resources and opportunities. The ruling attempts to correct the maldistribution of resources that had disadvantaged local governments and, by extension, citizens at the grassroots level.

However, the case also strongly invokes principles of commutative justice. The court's decision to withhold allocations from local governments run by unelected officials appointed by state governors speaks to the idea of fairness in transactions and exchanges between parties. This aspect of the ruling emphasizes the importance of adhering to constitutional mandates and democratic principles in governance. It suggests that the relationship between different levels of government should be based on fair and just interactions, with each level fulfilling its constitutional obligations.

The complex relationship between distributive and commutative justice is further evident in how the ruling impacts federal-state-local relationships. While it aims for a more equitable distribution of resources (distributive justice), it also redefines the transactional relationships between these levels of government (commutative justice). The court's emphasis on direct disbursement and democratic governance at the local level suggests an attempt to create a more just system of interactions between different governmental tiers.

Moreover, the case highlights the challenges in balancing these two forms of justice. While the ruling promotes a more equitable distribution of resources to local governments, it also centralizes some financial control, potentially impacting the commutative justice aspects of state-local government relationships. This tension reflects the broader challenges in Nigeria's federal system, where efforts to ensure fair distribution often intersect with and sometimes conflict with principles of fair exchange and interaction between governmental entities.

The *A.G Federation v A.G Abia State and 35 ors* case demonstrates how distributive and commutative justice principles can be simultaneously applied and sometimes tension in governance and resource allocation. The Supreme Court's ruling attempts to strike a balance between ensuring fair distribution of resources and promoting just interactions within Nigeria's federal structure, illustrating the complex and often intertwined nature of these two forms of justice in practical governance scenarios.

1.7.4 Key points of Divergence between Finnis theory of Justice and Nigeria's Administration of Justice.

Additionally, while the Nigerian constitution contains lofty principles, the reality on the ground often falls short. Corruption, weak institutions, and political interference often undermine the implementation of justice. So, while Finnis's theory may align with Nigeria's stated ideals, realizing it in practice would require major reforms and even attitudinal change. This work will never be exhausted if it delves into instances where corruption and selfishness frustrates the principles of distributive justice and commutative justice.

A good example is the recent purchase of a new Airbus A330 presidential jet by the Nigerian government in August 2024. The government justifies the purchase by claiming it will save money on maintenance and fuel costs in the long run. However, the exact cost of the aircraft has not been disclosed, with the presidency only stating it was bought "far below the market price." This acquisition comes at a time when Nigeria is facing severe economic challenges, with inflation over 30% and recent protests over the cost of living.⁵³

1.7.5 Relevance of Finnis theories to Justice Reform and Development

Finnis's justice framework offers insights for Nigerian legal reform, particularly in strengthening social welfare programs and reforming contract and commercial law. A practical application could be the improvement of the National cash Transfer Program to a universal basic income program, funded through oil revenue redistribution and taxation.

Also, consumer protection laws need to be strengthened to provide mandating clear language or even local languages in contracts between big corporations and individuals and enhancing consumer protection agencies that will address inequities in commercial transactions. The way telecommunication companies continue to abuse the commercial relationship with telecom users calls for reform to give credence to commutative Justice.

Orienting the legal system towards the common good could be realized through reforming environmental laws to prioritize community interests. This might include legislation requiring extensive community consultation and environmental impact assessments before approving large industrial projects, with provisions for community benefit agreements and long-term environmental monitoring. While these reforms would face challenges and resistance, they provide a roadmap for translating Finnis's theoretical framework into practical improvements in Nigeria's legal system

However, any reforms based on Finnis's ideas would need to be adapted to the unique Nigerian context. This would require grappling with the country's diversity, political economy, and institutional realities. It would also likely face pushback from those who benefit from the status quo.

⁵³ BC News. (2024, August 22). Nigeria defends \$500m presidential jet purchase amid economic crisis. <https://www.bbc.com/news/articles/cy4ydd2x5x2o> (Accessed September 13, 2024)

Ultimately, while Finnis offers a valuable framework, translating it into positive change in the Nigerian legal system would require sustained political will and popular support. His theory can help provide a vision of justice to strive for, but realizing it in practice will be a long-term struggle requiring the efforts of many stakeholders.

Finnis's theories of justice have significant relevance to the Nigerian legal system and society, but also face substantial challenges in implementation given the complex realities on the ground. His ideas can provide a philosophical foundation and normative vision for reform efforts, but would need to be carefully adapted to the Nigerian context. With sustained effort and commitment though, Finnis's framework could help orient Nigeria towards a more just and equitable future.

1.13 Conclusion

John Finnis's theory of justice, with its emphasis on practical reasonableness and the common good, offers a compelling framework for reimagining and reforming the Nigerian legal system. By distinguishing between distributive and commutative justice while also recognizing their interplay, Finnis provides a nuanced approach that can address the complex challenges facing Nigerian society.

The application of Finnis's ideas to the Nigerian context is promising. His principles of distributive justice could inform more equitable resource allocation policies, potentially addressing long-standing issues of inequality and underdevelopment. Meanwhile, his expansive view of commutative justice could strengthen contract law and consumer protections, fostering fairer economic relationships.

1.14 Findings

This study finds that several aspects of Nigeria's legal and social systems already align with Finnis's principles, such as the Federal Character Commission and the National Cash Transfer Programme. However, it also identifies areas where current practices diverge from Finnis's ideals, particularly in the distribution of political power and economic resources. The research highlights the complex interplay between distributive and commutative justice in cases like *AG Federation v AG Abia State* and *Ors*, demonstrating the challenges of implementing theoretical principles in real-world governance.

1.15 Recommendations

Based on these findings, this paper recommends a series of reforms to bring Nigeria's legal system closer to Finnis's vision of justice. These include strengthening social welfare programs, potentially moving towards a universal basic income system funded through more equitable resource distribution. In the realm of contract and commercial law, reforms should focus on enhancing consumer protections and addressing power imbalances in transactions. Environmental legislation should be updated to prioritize community interests and long-term sustainability, in line with Finnis's emphasis on the common good.

However, the implementation of Finnis's theories faces substantial obstacles. The subjective nature of "practical reasonableness," the complexities of Nigeria's diverse society, and entrenched

political and economic interests all present barriers to reform. Moreover, the tension between different aspects of justice – such as balancing individual merit with collective need – requires careful navigation.

Despite these challenges, Finnis's framework provides valuable philosophical grounding for legal and social reform in Nigeria. It offers a vision of justice that goes beyond mere legalism, emphasizing the role of law in promoting human flourishing and the common good. This perspective could be particularly valuable in a developing nation grappling with issues of resource distribution, corruption, and social cohesion.

Ultimately, while Finnis's theory cannot provide easy solutions to Nigeria's complex problems, it offers a robust intellectual foundation for reimagining the country's legal system. By engaging with these ideas, Nigerian jurists, policymakers, and citizens can work towards a more just and equitable society – one that balances individual rights with collective welfare, and that uses the law as a tool for genuine human development.

The journey towards realizing this vision will undoubtedly be long and challenging. It will require not just legal reforms, but also shifts in political culture and public attitudes. However, by grounding these efforts in a coherent philosophy of justice like that offered by Finnis, Nigeria can move towards a legal system that truly serves the common good of all its citizens.

1.17 Bibliography

Books and Book Chapters

1. Bix, B. H. (2019). *Natural law theory*. In M. D. Dubber & T. Hörnle (Eds.), *The Oxford Handbook of Criminal Law* (pp. 1-23). Oxford University Press.
2. Finnis, J. (1990). *Allocating risks and suffering: Some hidden traps*. *Cleveland State Law Review*, 38, 193.
3. Finnis, J. (2011). *Natural Law and Natural Rights* (2nd ed.). Oxford University Press.
4. Finnis, J. (2011). *Philosophy of Law: Collected Essays Volume IV* (Vol. 4). Oxford University Press.
5. Finnis, J. (2013). *The Priority of Persons Revisited*. *The American Journal of Jurisprudence*, 58(1), 45-62.
6. Gardner, J. (2013). *Finnis on Justice*. In *Reason, Morality, and Law: The Philosophy of John Finnis*, 151.
7. Grotius, H. (2012). *On the Law of War and Peace* (S. C. Neff, Ed.). Cambridge University Press. (Original work published 1625).
8. Miller, F. (2017). *Aristotle's Political Theory*. In E. N. Zalta (Ed.), *The Stanford Encyclopedia of Philosophy* (Winter 2017 ed.). Stanford University.
9. Porter, J. (2016). *Justice as a Virtue: A Thomistic Perspective*. Eerdmans.

Journal Articles

1. Adegbite, E. O. (2020). *The Political Economy of the Jumbo Pay for Nigerian Legislators*. *Journal of African Political Economy and Development*, 5(2), 1-16. <https://journals.co.za/doi/abs/10.10520/EJC-1e0a5f3d41>
2. Adeosun, A. B., & Adesina, J. O. (2020). *The Politics of Federal Character and National Integration in Nigeria*. *Journal of Politics and Governance*, 9(2), 1-12. <https://www.jpgjournal.com/article/view/447>
3. Bakare, A. S. (2021). *Examining the Distributional Impact of Government Spending in Nigeria*. *Journal of Economics and Sustainable Development*, 12(6), 1-11. <https://core.ac.uk/download/pdf/236408405.pdf>
4. Omebe, C. A. (2014). *Quota System in Nigeria: An Engine or a Brake on the Wheel of Progress?* *International Journal of Development and Management Review*, 9(1), 133-142. <https://www.ajol.info/index.php/ijdmr/article/view/104376>
5. Olasupo, F. A., & Fayomi, I. O. (2012). *The Corruption of Party Politics in Nigeria: The Real Issues and Challenges for the Anti-Corruption Crusade*. *International Journal of Politics and Good Governance*, 3(3), 1-23. <http://www.onlineresearchjournals.com/ijopagg/art/113.pdf>
6. Osina, P. (2016). *John Finnis on Law and Justice*. *Studia Iuridica Cassoviensia*, 4, 122.

Statutes and Cases

1. Consumer Protection Council Act CAP C25 LFN 2004.
2. *Ibekwe v. Nwosu* (2011) LPELR-1391(SC) (pp. 10-11 paras. D).
3. *Makwe v. Nwukor & Anor* (2001) LPELR-1830(SC) (Pp. 26 paras. E).
4. *Natsaha v. State* (2013) LPELR-22601(CA) (pp. 21 paras. A).
5. National Social Safety Nets Coordinating Office. (n.d.). *National Cash Transfer Programme. National Social Safety Nets Project (NASSP)*. <https://nassp.gov.ng/national-cash-transfer-programme/> (Accessed May 10, 2023).
6. *MTN(Nig.)Comm.Ltd.v.C.C.Inv.Ltd* (2019) 9 NWLR (Pt. 1678) 427.
7. *AG Federation v AG Abia State & Ors* (2024) LPELR-62576(SC).

News Articles

- BC News. (2024, August 22). *Nigeria defends \$500m presidential jet purchase amid economic crisis*. <https://www.bbc.com/news/articles/cy4ydd2x5x2o> (Accessed September 13, 2024).

Others

- Federal Character Commission. (2020). *About FCC*. <https://federalcharacter.gov.ng/about-fcc/> (Accessed September 11, 2024).