

INTERROGATING ADMINISTRATIVE LAW AS ORGANIZED LAWLESSNESS: THEORETICAL EXPOSITIONS

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Abstract: *This paper interrogates administrative law as organized lawlessness by engaging in the necessary theoretical expositions. The central research question of the work borders on the aptness or logic of depicting administrative law as organized lawlessness. Under a qualitative research design, the study relied on internet materials, book sources, journal articles and other secondary sources of non-numeric data to conduct its interrogations. It traced the source of delineating administrative law as organized lawlessness to Ferdinand Lundberg, an influential American social philosopher, journalist and scholar. The study found immense reason in the thesis of Lundberg. The incidence of administrative tribunals and the embedded practice of administrative adjudication (occasioning apparent detractions from the rule of law ideals) are central to the surrounding issues. Even at that, administrative law has remained an integral and critical aspect of law and administration in contemporary times. Hence, the work recommends the consideration of diverse perspectives in the relevant analyses, and continuing discussions to ensure the nonstop improvement and proper functioning of administrative law within broader legal frameworks.*

Keywords: *Administrative law, Law of administration, the rule of law, organized lawlessness*

Introduction

Theoretical underpinnings are central to generic knowledge production, and also critical to social engineering (Glaveanu et al., 2020; Byrne & Gammeltoft-Hansen, 2020). Law and administration are likewise crucial under these matrixes of societal productiveness and conscientiousness. Invariably, law becomes translatable as the rule of law while administration may mean dealing out, management or government. Whatever be the case, administration indubitably requires law as the bases of its efficacy and import. Then law needs administration for its utility and neutrality to be made manifest. Viewed from the competing standpoints of either legal positivism or legal naturalism, the truth is that law needs administration (Deo, 2023). In other words, the law needs to be administered for its efficacy to be unquestionable. Central to the societal usefulness of the law therefore is administration. Without this meting out of the law or its dispensation and management, or what may still be described as administering the law, what constitutes the law ends up being either babble, cruelty, hogwash or both mercilessness and societal disservice. But even as law necessitates administration, this necessitating variable in the current study equally calls for law in the execution of its functions. Invariably, both administration and law in their ultimate empirical import require theoretical underpinnings. Administrative

actions which possess theoretical grounding provide unassailable results. When such actions are mere products of random thoughts, the goods are never wholly delivered. Laws and afterthoughts are also antithetical. Accidental laws are accordingly disorientating to society. Administrative law therefore becomes and remains a captivating and fundamental area of scholarship in the fields of public administration and law. It naturally evokes interdisciplinary connotations implied by the design of this work. The paper is essentially about the linkages between the academic fields of public administration and law as areas of study (framed as theoretical expositions). But beyond that and more fundamentally, the contribution focuses on the associations between the rule of law and administrative law. Then in these contexts, is administrative law organized lawlessness? This constitutes the central research question of the paper.

Explicating the Rule of Law

The rule of law refers to the political idea that all institutions and citizens within a community or country are subject to the same laws, inclusive of leaders and the lawmakers. According to the National Geographic (2023, p.2) the rule of law refers to “a principle that all people and organizations within a country, state, or community are held accountable to the same set of laws. Its origin is traceable to ancient Greece and, more specifically, in the philosophy of Aristotle, who in his work titled *Politics*, raised the question of whether it is better to be ruled by the best leader or the best laws”. In interrogating the question, Aristotle “found advantages and disadvantages to both governing methods. His conclusion, however, suggested that laws were appropriate for most societies since they were carefully thought out and could be applied to most situations. Therefore, people should be ruled by the best laws” (National Geographic, 2023, p.2). In contemporary times, many states in the world have accepted that the rule of law should prevail. The implication of this is that not even the president of a country is above the law. It consequently means that no one is above the law. National Geographic, 2023, p.3) further clarifies that the rule of law extends to all corporations and institutions and “that all people should be held accountable to laws that are publically accessible and judged independently”. The rule of law also means that “laws should be enforced equally and consistently, adhering also to international human rights principles as the principle provides modern societies with stability and a clear system for resolving conflicts between citizens within a community of any size (National Geographic, 2023, p.3).

Contributing to the embedded explications, Okoli (2017, p. 27) asserts:
No matter how we conceive of the concept, the most important point to note is that the rule of, in its pure form and original version seems to mean or demand that:
All and sundry within a given state, from the highest to the lowest should be subject to the law of the land;
The state and its government, its agencies and instrumentalities must have legitimacy of legal foundation and be amenable to legal control;
Every act or decision of the state or government and its agencies must have legal foundation and submit to the direction, regulation and control of the law; and
Law in force in a state should be free of human elements so as to qualify as reason free from passion or as the pure voice of God.

Theorizing Administrative Law

Administrative law is an integral and cardinal component of public administration. It is also a branch of public law. In conceptual and empirical decibels, it belongs to the class of issues that discussants and practitioners know what they are all about, yet their definitive conceptualizations remain problematic. Ilo (2022, p.55) adds that “many jurists have attempted to define it. But none of the definitions has completely demarcated the nature, scope and contents of administrative law. Either the definitions are too broad and include much more than what is necessary or they are too narrow and do not include all the necessary contents”. Invariably, extant literature, inclusive of Ilo (2022) is replete with definitions of administrative law. Determined to achieve originality, this contribution dispenses with the methodology of reciting all those definitions by Ivor Jennings, K. C. Davis, Prof. Wade, Jain and Jain, Griffith and Street, Garner, etc., in looking at the meaning of administrative law. Yet one thing is certain, law (administrative law) and public administration are interrelated.

Along the lines of the foregoing suppositions therefore, Shafritz et al. (2017, p.12) submit that “while public administration is the law in action, the law of how, when, and where these actions can be taken is called administrative law”. Buttressing their positions from the American angle, these contributors add that “in the American context, administrative law does not deal with the substantive content of agency policies and practices. Instead, it focuses on the procedures that agencies use in exercising their authority. For example, Congress requires federal agencies such as the Environmental Protection Agency (EPA) to notify the public when the agency is creating a new rule that affects citizens. If the agency doesn’t follow the specific guidelines on how and when to notify the public, its new rules can be declared illegitimate by the courts” (Shafritz et al. 2017, p.12). Then this American scenario is quite instructive to the current researchers, against the backdrop of their Nigerian milieu as scholars and in the context of organized lawlessness as appellation for administrative law. Essentially under the Nigerian setting, the procedures that agencies use in exercising their authority are of little or no significance in administrative law. Such procedural notification of the public as issue of interest to the American Congress is not considered statutorily necessary in the Nigerian circumstances. Citizens are merely expected to obey the law (administrative or otherwise) as already created by some wise men (and probably women). Nevertheless, Shafritz et al. (2017, p.12) elucidates that “in effect, administrative law is the totality of constitutional provisions, legislative statutes, court decisions, and executive directives that regulate the activities of government agencies”.

According to Sharma et al. (2018, p.688) “in its broad sense, administrative law deals with the whole body of law relating to public administration. It is the sum total of the principles according to which the activity of the services (other than judicial) concerned with the execution of law is exercised. It is one of the two great branches of public law, the other being constitutional law”. Sharma et al. (2018, p.688) further explicates that :while constitutional law is concerned with the construction of the machinery of government, administrative law studies the parts of which that machinery is made, their interrelation and the way each of them functions. The point then is that “in this broad sense, administrative law covers all the statutes, charters, resolutions, rules, regulations, judicial decisions, and orders which have a bearing upon the structure of the administrative

authorities, the distribution of functions among them, their powers and procedures, their personnel and finance, and their responsibilities” (Sharma et al., 2018, p.688).

Robson & Page (2023, p.1) elucidate that “administrative law is the legal framework within which public administration is carried out and it derives from the need to create and develop a system of public administration under law, a concept that may be compared with the much older notion of justice under law. Then, since administration involves the exercise of power by the executive arm of government, administrative law is of constitutional and political, as well as juridical, importance”. Robson & Page (2023, p.2) further posit that “there is no universally accepted definition of administrative law, but rationally it may be held to cover the organization, powers, duties, and functions of public authorities of all kinds engaged in administration; their relations with one another and with citizens and nongovernmental bodies; legal methods of controlling public administration; and the rights and liabilities of officials”. In the viewpoints of Robson & Page (2023, p.2) “administrative law is to a large extent complemented by constitutional law, and the line between them is hard to draw”. They consequently depose as follows:

The organization of a national legislature, the structure of the courts, the characteristics of a cabinet, and the role of the head of state are generally regarded as matters of constitutional law, whereas the substantive and procedural provisions relating to central and local governments and judicial review of administration are reckoned matters of administrative law. But some matters, such as the responsibility of ministers, cannot be exclusively assigned to either administrative or constitutional law.

Consequently, some American and French legal experts see administrative law as incorporating parts of constitutional law (Robson & Page, 2023). In place of differences between administrative and constitutional laws as researched by some scholars, the emphases in this interrogation are rather on the relationships between the seemingly different branches of law. Aslam (2023, p.1) on these scores agree that “both constitutional and administrative law are parts of public law in the modern state and it is logically impossible to distinguish between administrative law and constitutional law and all attempts to do so are artificial”.

Aslam (2023, p.1) further discloses that “till recently, the subject of administrative law was dealt with and discussed in the books of constitutional law and no separate and independent treatment was given to it. Hence, many definitions of administrative law were included in constitutional law”. According to Aslam (2023, pp. 1-2) “constitutional law describes the various organs of the government at rest while administrative law describes them in motion. Therefore, the structure of the legislative and executive comes within the purview of constitutional law but their functioning comes within the sphere of administrative law. The implication being that on one hand administrative law deals with the organization, function, powers and duties of administrative authorities while constitutional law deals with the general principles relating to the organization and powers of the various organs of the state and their mutual relationships and relationship of these organs with the individuals”.

In other words, continues Aslam (2023, p.3) “constitutional law deals with the fundamentals while administrative law deals with details. It may also be pointed out that constitutional law deals with the rights and administrative law lays emphasis on public need. So, constitutional law deals with structure and the broader rules which regulate the function while administrative law deals with the details of those functions”. Invariably,

“the dividing line between constitutional law and administrative law is a matter of convenience because every researcher of administrative law has to study some constitutional law” (Aslam (2023, p.3).

Rule of Law, Administrative Law and Organized Lawlessness: Explanatory Linkages

The toga of organized lawlessness is referent to an absence of the rule of law. Then of all the contending issues that may make administrative law receive the appellation of organized lawlessness, the role of administrative tribunals and the element of administrative adjudication are central. The allusion here is to the role of the administrative tribunals in the seeming detraction or otherwise from the rule of law. Invariably, among the numerous constitutional changes of the past century or thereabouts, one of the most outstanding occurrences has been the emergence and spread of institutions that undertake functions similar to the types performed by courts. Such institutions are considered to be, and in some respects are, actually distinct and different from courts as conventionally conceived. In nearly all the common law nations, such bodies are called 'administrative tribunals'. Their major function is disputes adjudication between the State and citizens by reexamining decisions of government agencies – the same function that is performed by regular courts in 'judicial review' situations and appeals (Cane, 2009; Seidman, 2021).. Such institutions are said to engage in administrative adjudication

Bhagwan and Bhushan (2012, p. 480) highlight that “administrative adjudication means the determination of questions of a judicial or quasi-judicial nature by an administrative department or agency. Like a regular court, administrative bodies hear parties, sift evidence, and pronounce a decision in cases where legal rights or duties are involved”. According to Abyssinia Law (2023, p.5) the benefits of administrative adjudication are as follows:

Expediency: administrative agencies are better than ordinary courts in disposing cases timely.

Administrative adjudication is cheaper than court adjudication

Administrative adjudication is more convenient and accessible to individuals compared to ordinary courts.

The process of adjudication in administrative agencies is flexible and informal compared to the rigid, stringent and much elaborated ordinary court procedures.

Another justification which is not included in the above suggestion, that is related to the special expertise knowledge administrative tribunals manifest as compared to ordinary court judges. Administrative tribunals are filled by a panel of persons vested with special skill and expertise related to the complicated dispute they adjudicate. Whereas ordinary court judges are generalists in law and lack such expertise knowledge on the needs of the administration in this technologically advanced world.

On the side of its drawbacks and detriments, Abyssinia Law (2023, p.7) further posits:

Lack of legal expertise: The argument here is that, as many of the members of the panel are selected from different walks of life with no or little legal background, they may lack the requisite legal expertise to adjudicate disputes.

Partiality: The fear here is that, as many or all of the members of the administrative tribunals are at the same time employees of the various offices or agencies, they might not be free from bias and partiality towards the agency.

Violation of the principle of separation of powers and rule of law: Adjudication is the primary business of ordinary courts. So, transferring this power to administrative agencies is argued by some authorities to be a violation to this principle.

Busu (2012, pp.354-355) then opines that “whatever its advantages may be, administrative adjudication is a negation of the rule of law as rule of law ensures equality before the law for everybody and the supremacy of ordinary law and due procedure of law over governmental arbitrariness. But administrative tribunals, with their separate law and procedures often made by themselves put a serious limitation upon the principles of the rule of law”. This contradiction of the rule of law accordingly remains at the root of the criticisms leveled at generic administrative law and administrative adjudication in specificity.

It was actually Professor Ferdinand Lundberg, the influential American social philosopher, journalist and scholar, reputed for his critical analysis of different aspects of the United States’ society (including the legal system) who coined the phrase "organized lawlessness" to describe administrative law. Lundberg had argued then in the American system that administrative agencies and the vast discretionary powers they possessed often operated outside the traditional framework of checks and balances, leading to a system where arbitrary decisions were made and individual rights might have been disregarded. He contended that these agencies wielded considerable powers and authority but lacked the necessary checks and balances found in the judicial system, which could lead to abuses of power and infringement upon individual liberties (Lundberg, 1968). Lundberg's critique of administrative law was actually rooted in his broader analysis of the concentration of power in the American society, particularly in the hands of the wealthy elite. He argued that administrative agencies, influenced by powerful interests, could often act in their own self-interest or in the interests of those with significant influence and resources, rather than in the best interests of the public. According to Lundberg therefore, administrative law allows administrative agencies to make rules, regulations, and decisions that carry the force of law without proper accountability (Lundberg, 1968). The Lundberg thesis is highly valid today, as all societies continue to evolve towards improved standards. In other words, administrative law still portends a negation of the rule of law in many jurisdictions.

Conclusion

At the end of the embedded interrogations it is important to note in conclusion that Lundberg's perspective on administrative law as organized lawlessness represents only a critical viewpoint rather than a seeming consensus among legal experts. The truth of the matter is that administrative law has continued to play a crucial role in modern governance, providing a framework for the regulation of various sectors and ensuring efficient and effective public administration. Therefore, while valid concerns regarding bureaucratic discretion and potential abuses exist, many jurists and legal scholars still recognize the importance of administrative law in promoting public welfare and addressing complex societal issues. For that reason, in an overall context, Lundberg's characterization of administrative law as organized lawlessness highlights the potential challenges and current

criticisms associated with administrative agencies and their decision-making processes. However, it is essential to consider diverse perspectives and engage in continuing discussions to ensure the nonstop improvement and proper functioning of administrative law within broader legal frameworks.

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