

The Judiciary, Values and Good Governance: A Philosophical Perspective

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Abstract

This paper seeks to examine the values and tenets that the judiciary must uphold towards the dispensation of justice and entronement of good governance in the society. Where disputes arise and the parties are ineligible to settle it between themselves, resorting to court of competent jurisdiction for redress becomes the necessary condition. The judiciary, in this context becomes the last hope of the common man, the only corridor that leads to justice for the common person. The function of judiciary here is not just to fabricate facts or twist the truth, but to enthrone prime value system, interpreting the law to ensure that justice is served in due time. Good governance on the other hand is linked to effective participation in public policy making, promoting, human rights, ensuring independence of judiciary and the entronement of rule of law. Using the analytic method, this paper philosophically explores the thesis that administration of justice in a transparent and efficient process is a panacea to good governance and value system.

Keywords: Values, Judiciary, Good Governance, Philosophy, Justice

Introduction

Value can be seen as some point of view or conviction which we can live with, live by and can even die for. Values have been taken to mean moral ideas, general conception or simply interests, attitudes, preferences, needs, sentiments and disposition. Each person, has some sense of values and there is no society without some value system.¹

According to Sociologists, Values refer to intangible qualities or beliefs accepted and endorsed by a given society. Values are the beliefs that we have about what is important, both to us and to the society as a whole. Values help us to decide what is right or wrong. To an extent, one can aver that values are naturally situated in man's

1. G.E. Idang, "Cultural Relationship and the Language of Morals", *International Journal of African Culture and Development* 2, no. 1 (2007):4

mind but require man as well to steadily nurture and upgrade these values to avoid distortions. Generally, people are mostly predisposed to adopt the values they are raised with. In most occasions, people tend to accept without scrutiny those values as right because they are values of their particular culture. Whatever one considers as value must be visibly important and endorsed by the society without which it will not be considered as worthwhile.

The value system of any society begets governance, good governance as well sustains values. For instance, if proper values are in place in the society, the leader who has already acquired these values will emerge to maintain and uphold whatever the society applauds as good for the masses. The masses are the reason for governance. Good governance is a necessity as far as man is concerned. It is an instrument that enables man and enhances every other factor that upholds justice for the common person.

In governance, judiciary stands as the pivot for good governance. A fair, reasonable and depoliticized court system creates an environment devoid of chaos and enthrones tranquility. In order for democracy/good governance in a country like Nigeria to thrive, administration of justice must be transparent and efficient too. There must be a balance between self-service and values for a stable society. The task of this work is to philosophically explore the thesis that administration of justice in a transparent and efficient process is a panacea to good governance.

What Values are

Values are individual's beliefs that motivate people to act one way or another. Most times we treasure objects around us, same way our beliefs about what is right or wrong that are worth holding are equally treasured. Values can be seen as some point of conviction which we can live with, live by and can even die for. That is why it seems that values permeate every aspect of human life. One can speak of spiritual values, moral values, social values, intellectual values, economic values, political values and personal values. It is worthy of note that life seems to force people to

make choices, or to rate things as better or worse as well as formulate some scale of, or standard of values. It is observed that somehow, there are many types of values and classification of values. As people differ in their conception of reality, then the values of one individual may be different from those of another. We can declare the scene or objects before us as either beautiful or ugly depending on the way we perceive things. We can also praise or blame, even declare act right or wrong. Each person, as we could see, has some sense of values and there is no society without some value system.²

Whether one is aware of it or not, the society has ways of daily forcing its values on its citizens about what is good, right and acceptable. It is common that we go about our daily life trying to conform to acceptable ways of behaviour and conduct. If a man, for instance, does not conform to their immediate society values, such man is called to order by the members of the society. Truth telling in most places is a priority value that must be adhered to failure of which brings punishment. It is the inculcation of these values that sustains governance and upgrades it to good governance. A philosopher king, according to Plato, will also maintain a high value system that will bring about good governance. Mahatma Ghandi upheld simplicity, non-violence truths, forgiveness, self-suffering as values. Values denote the degree of importance and good governance as such is a value that ennobles the society.

The Arms of Government

There are three arms of government in Nigeria as in other democracies. They are Executive, Legislature and Judiciary. These three arms are meant to work together for the good of the nation but very independent of one another. However, there are checks and balances that exist amongst them. The Judiciary interprets the law enacted by the Legislature but implemented by the Executive. The Executive is that part of Government which enforces the law and has overall responsibility for the

2. Idang, "Cultural Relationship and the Language of Morals"

governance of a state. The Executive is the prism through which what is considered GOOD is considered in governance.

Both Executive and Judiciary have a very big role to play in order to achieve good governance and healthy value for the system. The scope of Executive power varies greatly depending on the political context in which it emerges and it can change over time. In Democratic countries, the Executive often exercises broad influence over national issues/polities. Based on separation of power, government authority is distributed between the three arms of Government. Separation of power refers to the divisions of State's Government into branches each with separate, independent powers and responsibilities so that the powers of one branch are not in conflict with those of the other branches. This is practically done in Presidential System of Government in contrast to fusion of powers in parliamentary system of Government. The separation however provides checks and balances amongst the three. In a brief approach let's look at what the three does with their powers.

The Executive

The President is both the chief of the State and Head of Government having been elected through Universal suffrage which is regarded as more than a privilege. The president as well, heads the Federal Executive Council or Cabinet. In Nigeria, the 1999 constitution vests all the executive power of the federation in the person of the president which can be exercised directly by him or his/her vice or members of his/her cabinet. Section 5(1) (b) of the 1999 Constitution of the Federal Republic of Nigeria provides that the executive power of the president extends to the maintenance of the provision of the constitution.

The Legislature

This is said to be the first among the three Arms of Government. The Legislature derives its power from the 1999 constitution (as amended) in section 4(2). The Legislature is vested with the power to make laws for the peace, order and good

governance of the federation. Under section 4 (1) of the 1999 constitution of the Federal Republic of Nigeria (as amended), the National Assembly of Nigeria is vested with the Legislative power. That is the power to make laws for the Nation. The National Assembly of Nigeria has two chambers; the House of Representatives and the Senate (Green and Red chamber). The lower chamber and Senate with Speaker and Senate President as Leaders respectively.

Judiciary

The Judiciary is the only one of three in which its members are not elected but are appointed. The Judiciary and the Supreme Court in particular are intended to uphold the principles and laws of the Nation's Constitution that was written. The goal of the Judiciary is to protect the basic rights of the citizens. Even though the art of governance requires the active participation of the three arms of government, the Judiciary is exceptionally important in the task of achieving good governance. Amongst the indices mentioned above for achievement of good governance, rule of law determines the rest. For instance, if the executive or those in power disregard the existence of rule of law, the opportunity of participation or voicing out will not be possible. The leader will not see reasons to be transparent, responsive or being consensus oriented. Successive governments in Nigeria precisely have always boasted of their ability to bring good governance at one point or another. Good governance will surely bring about the desires of the people/citizens which manifest in the rule of law, inclusiveness, respect of human right, political stability and economic advancement. The problem with Nigeria is leadership. There is no recognition of integrity as a tool to good governance. Leadership problem occurs when the leader has no integrity, lack philosophy among other factors. Such breeds backwardness according to Chinua Achebe.³

3. Chinua Achebe, *The Trouble with Nigeria* (London: Heinmann Educational Books, 1983)

The Necessary Role of Judiciary

The Separation of Power

Baron De Montesquieu, a French Philosopher, propounded the principle of separation of power. He averred that “political liberty is to be found only when there is no abuse of power”.⁴ But constant experience shows us that every man invested with power is likely to abuse of it. In attempt to emphasize the principle of separation, let us look at the functions of judiciary in the face of effort to install a healthy system.

Judiciary interprets laws in the state including the constitution and acts of parliament. However, Issues of constitution are delicate such that it requires a dire attention of those whose jobs are specifically for it. When dispute erupts and those involved could not settle themselves resorting to court of competent jurisdiction become the necessary condition. The judiciary settles disputes between aggrieved parties e.g. Individual, Corporate bodies, Government, etc. It reviews the actions of both the Legislature and the Executive through judicial review. It makes laws through judicial precedents and pronouncements. It performs ceremonial functions eg. The administration of oath of office. It preserves fundamental human rigidity. It compels the executive to perform its duties. It performs administrative functions such as probating wills, management of estates in the interest of minors (Children below 11) managers, divorces, affidavits, oaths of office etc.

Good Governance

Governance is the process of decision making and the process by which such decisions are implemented or otherwise. Governance in this context can apply to corporate, international, national or local as the case may be. In politics, governance pertains to decision making and its process to enable the leader to attend to the need of the society amidst difficulties. Generally, governance is defined as the rules of the

⁴. Baron De Montesquieu, *Spirit of Laws* Revised edition (New York: Prometheus, 2002), 6

political system to solve conflicts between actors and adopt decisions. A variety of entities (known generally as governing bodies) can govern. The most formal is a government, a body whose responsibility and authority is to make binding decisions in a given political entity. The use of the term governance in its broader sense echoed more in the nineties by economists and political scientist and disseminated by institutions such as the UN, the IMF, and the World Bank. Since then, the term has gained increasing usage. Having elaborated on governance, what is good governance?

Every person both rich and poor desires whatever that is good. When discussing governance in particular organization, the quality of governance is often compared to a standard of good governance. In the case of government/politics, good governance relates to consistent accountability, integrity, stewardship, transparency and responsiveness. It is a term used in international development literature to describe various normative accounts of how our public institutions ought to conduct public affairs and deliver public goods and services.

The world Bank corroborated this in its definition of governance as the manner in which Power is exercised in the management of a country's economic and social resources for development.⁵ It is when the development is met that such art of governance merits good. With the etymological definition of governance as steering, it is necessary to enunciate factors that will bring about good steering.

Good governance is attaining effectiveness that has its citizens in mind through transparency, accountability, judicious public resources management and respect for self and rule of law. Another way to think about good governance is through outcomes. Since governments carry out with goals like the provision of public goods to its citizens, there is no better way to think about good governance other than through deliverables, which are precisely the one demanded by citizens like

5. World Bank, *Governance: The World Bank's Experience (Development in Practice)* (A World Bank Publication, 1994)

security, health care, education, water, enforcement of contracts awarded, protection of property, protection of environment and their ability to vote and get paid fair wages.

Good governance might be approximated with provision of public services in an efficient manner with higher participation of higher population like the poor. Lawson, in Rothstein's book⁶ mentions that the author relates good governance to the concept of impartiality which is basically achieved when bureaucrats perform their tasks following the public interests rather than their self-interest. Lawson differs with him in that the impartial application of law ignores important factors like the economic liberalism which matters due to its relation with economic growth. So far, it is established that good governance does not happen overnight and or, in isolation. It must be achieved with all hands on Deck, including strategies and well-thought-out philosophical ideas. Most times societies are architect of their problems due to the negligence of salient things like instituting core values.

Indices of Good Governance

Now that the term good governance has been established let us look at necessary indices or characteristics of good governance. Citing the United Nations Economic and Social Commission for Asia and Pacific, the concept of good governance has eight principles

1. **Participation:** Participation is the concept of good governance here is an opportunity for everyone to voice their opinions through institutions or representatives. In addition, everyone, without exception, has the right to freedom of association and expression.
2. **Adherence to Rule of Law:** To implement good governance, the legal framework in the country must be enforced impartially, especially

6. B.O. Rothstein, *The Quality of Government Corruption, Social Trust and Inequality in International Perspective* (Chicago: The University of Chicago Press, 2011)

concerning human rights law.

3. **Transparency:** Transparency connotes openness that every policy must possess. There must be a guarantee that any information related to the policy can be accessed by everyone, especially those who are directly affected by the policy.
4. **Equity and Freedom:** Good governance needs institutions and processes to attempt to save all stakeholders within a reasonable time.
5. **Consensus Oriented:** The fifth principle is related to the decision-making process. When the decision-making process cannot accommodate everyone's wishes, then at a minimum, decision must be the decision that can be accepted by everyone and does not harm anyone.
6. **Equity and Inclusiveness:** Good governance ensures justice for the community. Everyone has the same opportunity to maintain and improve their welfare
7. **Effectiveness and Efficiency:** Every decision-making process and its institutions must be able to produce decisions that will meet every community's needs. Community resources must also be utilized optimally by the government.
8. **Accountability:** All institutions involved in good governance have full responsibility to the public for the sake of improving the quality of the society.

The Nexus between the Judiciary, Values, Good Governance and Philosophy

Philosophy, it is said, is the mother of all knowledge. Most times, it is considered the cornerstone or bedrock of all meaningful intellectual Enterprise. All efforts to make do with a definition of philosophy never succeeded fully. Its classical definition as Philo -Sophia - love of wisdom looks like a mere statement. Philosophy makes

inquiry about existence, concerns itself with what is and what ought to be. In the field of philosophy, life looks more intelligent, meaningful and purposeful. It achieves this by clarifying and justifying issues through critiques of concepts. One is not afraid of this philosophic mission. History has it that most propounded revolutionary truths were done by philosophers. Their initiating forays direct whole army of scholars into knowledge frontiers.

Philosophy deals with the intellectual foundations of life, interrogating and evaluating foundations of our beliefs and actions. The whole issue of doing what is right and avoiding wrong revolves around man in his effort to live a comfortable life through good governance.

From the legislative dimension, every law has philosophy as its bed Rock because in every law, logic is the basis. Laws are conspicuously formulated to address problems arising from various facts of life in the society. In making laws, efforts are made to instill good values system in the society. Philosophy plays a prominent role in the formulation of these laws and also directs the mind of people and as well mold their behaviours to pursue the ideals of good governance. The Judiciary stands tall as the pivot of good governance because of its role in enforcing as well as being transparent prism in administration of justice.

Conclusion

Judiciary is the only corridor that leads to Justice for the common person. We have been able to see that the issue of good or bad government is actually an ethical one, in other words, whether or not, a government is good or bad depends on how well the aforementioned goals are clearly realized through governance. Good governance entails integrity, participation et al. Healthy values that will encourage hard work should be inculcated. The judiciary as the pivot of good governance ought to impose stringent measures on any acts that may derail Justice. Weak judiciary affects the consolidation of good governance because justice will not be served. This paper

concludes that administration of justice in any transparent and efficient process is a panacea to good governance and healthy value system. Therefore, the recommendations of this paper are as follows: those in government should show leadership by upholding the tenets of law; appointment to bench should be strictly by merits and not through lobbying; the most qualified man or woman in judiciary should be appointed devoid of political inclination; philosophy of participation, self-respect, honesty, accountability, fairness and equity, should be the hallmark of national life and a coordinated healthy value system should be encouraged.

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