

The 'Art' of Law in Procedural Justice through the Political Strata to Achieving a Near Absolute Social Justice

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Abstract—Law is not a steady or an ageless system, working in an abstract logical way it exists in a world controlled by time. Over the years time has played a big effect on the changes to law it uses the present as a linking bridge to the past and future. It's also imminent to state that law is not just a system of rules, sanction, guidelines but also a structure of thought and expression upon which discrete set of dynamic and dialogue tensions are built. To juxtapose law and justice is to look at the works of author s and ask questions like does justice come from the law? If so is law the guiding path to justice? At which point can justice go beyond the scope of the law? The un-abating existence of law and justice is interrupted by the fact that they cannot be simultaneously prioritized. According to Jeremy Bentham in his utilitarian theory he wrote about the 'propensity to maximize goodness'. He saw a right action as one which has the conception of what is good. The Act of being good 'goodness' in action can it be taken to mean justice in action? The society needs the law while the layman craves for justice. Critical legal studies on law and justice emphasized the political strata of the society. This essay would support the 'Art' to justice taken from the humanistic view in procedural justice which can lead to social justice.

Index Terms—Art, political strata, procedural justice, social justice, tensions.

I. INTRODUCTION

Assuming an average lawyer or an average intelligent law student is asked to briefly explain the function of the court, the answer would probably be: our legal system is based on legal rules. The legal rules contains what should or should not be done but most time negative in its approach, it does not define the act or properly states what it entails but stipulates the punishment available for breaking the rule. For instance theft is a legal wrong, where two parties agree to the terms of a contract they each have to fulfill their obligation. The legal rule reflects some aspects of community idea and values, social standards, social, policies, moral norms many more. Some of the rules are made by legislature and some by court. The court is charged with the responsibility of interpreting the legal rules which are in generals cope the court makes the specific application in the case before it [1].

II. LITERATURE REVIEW

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A. The Idea of Justice

Justice is something we all want from a law and believe should be an integral part in any legal system. An acceptable meaning to justice is hard to define because every author has his/her point of view; however, there are questionable aspects of justice, is a particular law just? The controversial issues raised in justice include if justice can be found in the law, it can be said there is a good combination of law and justice [2].

According to the Webster's dictionary it defines justice as the quality of being just or fair, the act of determining rights and assigning rewards or punishment. This definition on its own is vague and abstract but will need further discussion. When discussing justice there are other elements drawn into it: fairness, morality, integrity of the system. These various elements bring greater depths in understanding and significance the objectives of justice. Example justice can be congenitally linked to moral obligations this provides the bedrock for some theorists view on justice, significance of the objectives, justice and morality [3].

Brian M. Barry in his book justice as impartiality, justice as impartiality offers a solution, his idea of justice centered on impartiality. Neutrality of even those in the system despite the conflict, differences, power struggle in the society the impartiality of justice is sacred and should remain untouched [4].

To Look at the idea of justice, is also to answer the question what do we want from justice? The word 'justice' in its natural form connotes 'action' what do we seek from this action? The action of justice plays out in the society until there is justice or the people feel they have been justly settled there will be an un-harmonious society and the initially reason for the signing of the 'social contract' will not be achieved. There should be the bearing of public reasoning on the idea of justice.

B. Interpretation of Justice

John Rawls tried to maintain a difference between the principles of justice for institution and the principle which applies to individual.[5] I would like to reaffirm with Liam B. Murphy "all fundamental normative principles that apply to the design of institution also apply to the conduct of people" In this regard justice is a means of controlling the society, ensuring the "majority" remain safe the concept of justice is maintained mostly through the court system, [4] it is crucial for this legal system (judicial) to be willing to discharge its function effectively, without it there is no justice it becomes an all for one, one for all fight. The concept 'justice is blind' should be a guiding principle for a proper working judicial system. Justice should be the same

for all, regardless of the skin color, background or belief. In the real play of justice in action enclosed in the courtroom, most time justice is not totally blind because the judicial process is handled by judges, jury services which are humans with their own thought, consciousness. The law cannot apply itself the process of application sometimes are disturbed which raises the tension; ordinary language and legal language, the methods of judgment (Literally, Mischief, Golden rule) with the tension, distortion and partial blindness how then can true justice be achieved. Unfortunately, these breeds lack of confidence in judicial system.

The concept is broad and will be narrowed, justice can be said to be an idea with no proper retaliating of its meaning. Despite, the idea has been with human for over thousands of years. There is a revolving principle around justice no matter how hard it is tried to been kept off or at minimal 'every action has a consequences' the court tries to give adequate and fair punishment for unlawful actions as provided by the law even those left at the discretion of the court (judge). Just as the law varies from country to country so all justice examples the crime of theft in the Middle East could result to loss of the hand in another country like America would get probation these are too different interpretation of justice and also raises the question if justice is punishment (revenge). According to John Rawls justice is the virtue of social institutions [6].

According to Funk and Wagnall's standard Dictionary defines justice as administering a deserved reward and rightfulness or lawness. In as much as this definition seems to be true in most cases. Its application is not always correct. If so people should not pay for a crime they did not commit before found innocent. If justice is giving to every man according to the measure of his act, what happens to cases where the defendant have served or still serving the punishment for an offence not committed before found innocent. Justice should not be based on discrimination in most countries men receives harsher punishment than women, teenagers are easily pulled over and searched frequently. Minorities group receive unfair discrimination in the use of the judicial system. When a person has an unfavorable back ground with the court, that person is judged beforehand based on his family's actions. Justice ought to be the language of the lawyer there are some law's that have been made which justice is not implanted in the like the totalitarian regimes [7].

Justice as fairness: this is the foundation of distributive and corrective justice. Sometime justice may be according to merit, need, statutes or entitlement which ever criteria used there has to be the subjective fact which relates with the people the justice is meant to serve. Some author include equality as justice, I would like to propose proportionality in fairness as shadow justice in action. Equality should be in the application of the law while proportionality should be in the practice. I know some person would want to know why because to the loud cry we hear 'equality'. The law should apply to everyone equally; rule of law should take preeminence. In the outcome of case or to bring forth a desired outcome proportionality would be preferred especially in distributive justice, in procedure justice equally treatment of the law should be emphasized [8].

C. Procedural Justice

Fairness put in the process of dispute resolution, this relates to the administration of justice and allocation of resources. This procedure needs to be adopted with the people in mind, treated with respect and dignity so the process is accept able and works for the people not against the people. For there to be fairness some author has proposed there needs to be consistency: would like to say it should be consistency of law to avoid biasness each case should be treated according to it owns fact. Each particular case should reflect genuine personal identity of the parties before the court [9].

Impartiality and neutrality of the humans' mechanism in the system unbiased decision makers; it is likening to justice and integrity. In seeking for justice through the mechanism available to us presently, (judicial system) the character, integrity of the persons involved are questioned it has to be accountable to laws which are publicly promulgated, equally enforced and independently adjudicated through an judicial framework governed by the principles of transparency, integrity and accountability. There should be are presentation of these parties they should have a voice regardless of which group they are from. In this regard the majority good is unjust. [4]

The challenge posed to the court has included creating the avenue for justice although this has been the traditional concerned of judgment and stressed in legal education. Another pursuit of the court is to handle people issues in a way which is acceptable and the parties are willing to abide the decisions of the court. This helps to manage social conflict with people adhering to court judgments reduces the chance of the parties are resolved before further harm are done to the parties also not feeling compelled to carry out the judgment [10].

There is a great need for the court to maintain the legitimacy of the legal system this can only be done by building the trust and confidence of the public in the judicial system, court, judges, jury what measures can be taken to ensure no biasness in jury system? When an issue concerns a black man he is not careful to think that the white man sitting on the jury will act prejudicial towards him. This helps to prevent public cynicism about lawyers and court [11].

D. The 'Art' of Law in Procedural Justice

Borrowing some premises of the cosmopolitans on which they set their belief: humans are the ultimate fragment of moral concern [8] should be treated as such by everyone and all humans should enjoy equally the status of ultimate moral concern. We have discussed some attribute that goes with justice, of which morality is included if human beings are seen to be a factor of moral concern it stresses further the need for people to be involved, carried along and looked in to properly in procedural justice. It is important to note that people do not form the idea or rather have the notion that a decision is just if the process through which it was gotten is questionable. Virtue should not be made out of necessity, in trying to do justice which is necessary as claimed by the legal system there should be no compromise spawned by an unprincipled process. For example, if a member of the public is pulled over and taken to court for drunk driving

(negative outcome), but received a fair treatment during the interaction with the officer administering the breathalyzer test and the court (positive process), the driver is more likely to feel that the encounter was fair and less likely to contest the accuracy of the test administered and the court process. The driver is also more likely to comply with the court order [12].

E. Political Strata

John Rawls in his book *Justice as fairness* 1958 considered justice to be the virtue of social institution fondly called practice, 'practice' which carries a technical meaning positions, offices which has ascribed right, duties, power, liabilities. Justice should be the virtue in whatever actions that follows from the social institution [5].

Professor Nonet buttressed that justice can be done and undone silhouette places where administrative decisions are made. He also conveyed in his study sociological realization that exposed issues on contemporary jurisprudence [13].

The legal system is immensely important part of our government. In a democratic system no part should be a mystery. According to the critical legal thinking using the Marxist approach, focuses on how the law works to reinforce social divides. It looks at the social barriers and tries to create a platform for a more equitable society. It also influenced idea that the theory and practice of law just as partisan politics, the ruling of a judge is just as politically exercised as the vote of a legislator.

Justice should not become a casualty for political calculation [3].

F. Social Justice

According to David Miller in his book the principle of social justice he said that "social justice is an idea that is central to the politics of contemporary democracy" not everyone stands for some persons think it is a delusion other ideas like personal freedom should be incorporated in to it. He also looked at circumstances of social justice having purpose in policy guiding ideal with political relevance. It looks at the relation between individual and society, which can be resolute in terms of distribution of wealth, opportunities for personal activity and social privileges. Privileges are special right or advantage accessible only to a person because he/she is part of a group. [14] The concept of social justice has been used to maintain status quo and advancing social reforms even for the justification of revolutionary actions; today radical secularists, religious fundamentalist, pressure group, liberals and conservatives all claim their courses of action are socially just. We are considering the people who are part and live in the society the ladder the climb to obtain justice and how it reflects in the society. The concept of social justice has always contained critical idea that challenges to reform to provide greater fairness in the institution and practice. There is the context of social inequality in regards to age, ethnic or racial category, sexual orientation, religion, disability or social class [15].

At a superficial level, the doctrine public trust seems easy to spot but there are certain provision like constraint on public alienation by the sovereign with an assured protective duty of the government and a fiduciary obligation in the legal system. Making the people have confidence in the

system which the government has given to them, also create sense of belonging to the society. This breeds harmony in the society the people are put into consideration, sense of worth it helps not to create the ideology that the law is made by the government controlled by the government sometimes the people go against law they do not know they are guilty of [16].

III. ANALYSIS

To describe the humanistic view on the procedural justice through the contemporary politics and its aftermath on the society, we must sooner rather than later look at what the people themselves think.

TABLE I: ISOSCELES TRAPEZOID

Questions	Humanistic view	Strictly the law
How do people feel when they are carried along in their case	1.5	.75
How do people react to the law	1.8	.45
To what purpose do people think the law serves	1.3	.95
What are the peoples reaction of the law to their society	1.35	.90
Total	5.95	3.05

The table is called the isosceles trapezoid. Its property is convex and type quadrilateral with asymmetry line running in-between, resulting to two opposite parallel sides. There are two sides to application of law in legal process: humanistic view involving the people participation and strictly the law (law as it is). In reality we may not have one side in the legal system that's where the symmetry line tries to create a harmonious balance where each side sees its reflection through the other.

In the course of writing the essay a pool was conducted with 1,500 numbers a sample of 15% was chosen to put forward.

The question tries to examine how people feel when they are involved in the judicial process seeking justice, their reactions, and the reason they think the laws exist and the influence it has on the society. The Humanistic view centers on the individual, their acceptance of the law, how it applies to them and involvement in the process. While the strictly the law means everything is done as stipulated by the law and precedence follows. The letters of the law are explicitly followed.

The legal process is torn between the split between the enforcement of binding rules and creative use of the law from the abstract above we see that law is not static and it has overtime been built on both dynamic and dialogue tension. The law should be prevented from deviating into adjudication, legalism and blind application of the law. The variation on the implementation of binding rules in its positive pursuit on acceptable program of action in the legal process is to discover the paradox between advocacy and political interest.

IV. DISCUSSION AND CONCLUSION

The modern reliance on government to make law and establish order in the society depends on how involved the

people were in the process and how they perceive it applies to them. Members of the society are not satisfied with absolute dependence on the law and legal system for their dispute resolution consequently, they hinge to private for conflict resolution and this have its tone in the society. In this vein, some will advocate for privatization of societal control, law and justice without the state. Justifications are developed for the privatization than government internal order.

The psychological belief evinces the positive benefit of participatory trend. This all egged benefit is wrapped round interpersonal justice.

People are prone to accept decisions and its resultant effect if they participated in the making. And the process for the decision is perceived to be fair there is a greater tendency that the likely outcome will be considered fair. This process helps the perception of the procedural justice to influence the perception of the political strata and contribute to the approval of decisions this can be known as the 'fair process effect'. The legal procedure in the special task of resolving issues sees the relevance even if narrowly limited to connect the stand point of the parties within the framework of acknowledge rules (law).

These following occurrences should be approached form the outlook of humanistic viewpoint. The administrative disposition in the legal system, the legal and social significance of the combatant principle, legal and civic proficient, the quest for a positive approach to law in a system committed to good governance; the connection between law and politics.

The furtherance of law in the political system can be reinstated in the legal process which is a special feature of the society when there is a shift from the rules to the case. The vehicle of participation in legal advocacy presents a distinctive opportunity for some level of independent power participation this enhances the peoples position in the society, can be referred to as another strand of legal competence can be tagged 'law-consciousness'.

V. RECOMMENDATIONS

For further studies despite people are involved in the judicial system it still does not produce an absolute justice. It may be said that absolute justice does not exist with

humans only with a higher being. As humans we can only try to maintain just and fair to have a harmonious society.

Works on the privatization of social control should be expanded, its merit and workability.

REFERENCES

- [1] L. Marika, "Building a just society: The role the constitutional judge, idea of justice in the contemporary value jurisprudence and the process of Argumentation," 2002.
- [2] A. Sen., "What do we want from a theory of justice?" *The Journal of Philosophy*, vol.103, no. 5, pp. 215-238.
- [3] W. Raymond, *Understanding Jurisprudence, An Introduction to Legal Theory*, 3rd Edition, Oxford University Press, 2012.
- [4] B. M., *Justice as Impartiality*, Oxford: Clarendon Press, 1995.
- [5] J. Rawls, "Justice as fairness," *The Philosophical Review*, vol. 67, no. 2, pp. 164-194, 1958.
- [6] L. B. Murphy, "Institutions and the demands of justice," *Philosophy and Public Affairs*, vol. 27, no. 4, pp. 251-291, 1998.
- [7] F. Jerome, *Courts on Trial, Myth and Reality in American Justice*, Princeton University Press, 1973.
- [8] B. L. Benson, *The Enterprise of Law: Justice without the State*, pp. 11-36, San Francisco: Pacific Research Institute for Public Policy, 1990.
- [9] J. Greenberg and R. Folger, "Procedural justice, participation, and the fair process effecting groups and organizations," *Basic Group Processes*, pp. 235-256, Springer New York, 1983.
- [10] T. R. Tyler, "Procedural Justice and the courts," *Court Review*, vol. 44, pp. 26-164, 2007.
- [11] A. Sangiovanni, (2007), Global Justice, Reciprocity, and the State. *Philosophy & Public Affair*, 2007.
- [12] T. R. Tyler, "The role of perceived in justice in defendants' evaluations of their court room experience," *Law and Society Review*, pp. 51-74, 1984.
- [13] P. Nonet, *Administrative Justice: Advocacy and Change in a Government Agency*, Russell Sage Foundation, 1969.
- [14] D. Miller, *Principles of Social Justice*, Harvard University Press, 1999.
- [15] M. Reisch, "Defining social justice in a socially unjust world," *Families in Society: The Journal of Contemporary Social Services*: 2002, vol. 83, no. 4, pp. 343-354, 2002.
- [16] J. L. Sax, "Liberating the public trust doctrine from its historical shackles," *Uc Davis L. Rev.*, vol. 14, p. 185, 1980.



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