

Just Application of The Rule of law: A Justification for Peaceful Co-existence

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***Abstract:** A just law is a man-made code that squares with the moral law or the law of God. Just application of the rule of laws as a justification for peaceful co-existence means that every individual should be treated the same by the civil society for the common good. An unjust law is no law at all; it acknowledges that authority is not legitimate unless it is good and right. Therefore, laws are bodies of rules for human conduct. They are meant to guide the actions of the individuals. Laws as a set of rules decided by a particular authority for the purpose of keeping the peace and security of the society means that a nation without laws is like a vehicle without wheels. The method of philosophical analysis is employed to expose the relevance of just application of laws as a justification for peaceful co-existence among individuals and nations. Without applying these laws justly, people cannot live peacefully together as there will be the problem and perpetual conflicting human rights. This is because the rule of law was conceived as something that should map out the ways and means of peaceful co-existence, progress and development of the society under a uniform rule-guided system. This means that just application of the rule of law by the government will be a guide to everyday social and legal interaction and a means to prevent anarchy. When this is done, all citizens become equal in the law as well as before the law.*

Introduction

Law is an instrument which regulates human behavior and conducts. Again, law means justice, morality, reason, order or rightness from the view point of

the society. This means that all societies need laws for its survival and any society without laws is like a body without a head. Laws govern much of what everyone does, and tells us what our rights and duties are. It equally tells us the consequences of not doing what we are supposed to do.

For Malinowski in his book *crime and custom in savage society*:

The rules of law stand out from the rest, in that they are felt and regarded as the obligation of the one person and the rightful claims of another. They are sanctioned not by a mere psychological motive, but by a definite social machinery of binding force, based... upon mutual dependence, and realized in the equivalent arrangement of reciprocal services.¹

Therefore, without laws people cannot live peacefully together as there will be the problem of reconciling conflicting human rights. For Thomas Hobbes in his theory of states, when man was alone, there was no need for laws. The need for law arises by the increase in human population, to help reconcile conflicting rights of different individuals. It is therefore expected that people should obey laws to avoid an anarchical state where jungle justice operates.

According to Hobbes, the only way to escape civil wars strife and anarchy which are natural consequences of ever conflicting human rights is to form a commonwealth because men had a foresight of their own preservation. Again, for Locke the main purpose of forming the commonwealth or civil society is for the preservation of the natural right of the citizens which is life, liberty and property. The rule of law is the heart of the relationship between society and the state. It is the basis for creating trust and accountability and forms the social contract between a government and its citizens when countries experience conflicts due to unjust application of the rule of law.

Moreover, when government is weakened and can no longer protect its citizens, the social contract collapses. Hence John Locke opines that government should be dissolved when “the legislative acts against the trust reposed in them; when they endeavor to invade the property of the subject and to make themselves or any part of the community arbitrary disposers of lives, liberties or fortune of the people.”²

This arbitrary attitude of the government towards citizens shows that the government has betrayed the trust the people had for them. It is only through the just application of the rule of law that community balance, peace and harmony can be achieved. According to John Locke the commonwealth was created through social contract for the purpose of preservation and protection of the citizen's life liberties and possession. Therefore, when government fails to fulfill its obligations through bad policies and unjust application of this contract, it creates chaos, anarchy and destabilizes peace among the people.

However, the connection between peace and the law is fertile, essential and necessary. Just application of the rule of law will bring about peace, liberty, equality and fraternity. The law cannot be anything but the means to attain peace with order in a community.

What is Law?

Law as a concept does not have one definition. Many philosophers and scholars of law have various definitions for law throughout human history. One definition is that law is a system of rules and guidelines which are enforced through social institutions to govern behavior. In the concept of law, Hart argued that law is a "system of rules."³ For Austin, law is "the command of the sovereign, backed by the threat of a sanction."⁴

. According to Thomas Aquinas, law he argued is "a rational ordering of things which concern the common good that is promulgated by whoever is charged with the care of the community"⁵

There are various views whether law exists by nature or is man-made. While the sophists opined that the essence of the law is nature and reason, Socrates, Plato as well as Aristotle admits that the essence of law is convention and will. The legal positivist holds the view that the essence of law is the command or will of the sovereign. Thomas Hobbes argued that an "unjust law is a contradiction as he was actually concerned with providing the greatest happiness for the greatest number.

H. L. A Hart, in his book, *The concept of Law*, natural law jurist hold that

there are certain principles of human conduct awaiting by human reason with which man-made law must conform if it is to be valid, whereas legal positivists contend that it is no sense a necessary truth that laws reproduce or satisfy

certain demands of morality though in fact they have often done so.⁶

Some other definition on laws includes the Stanford Encyclopedia of philosophy

The rule of law comprises a number of principles of a formal and procedural character, addressing the way in which a community is governed. The formal principle concern the generality, clarity, publicity, stability and prospectively of the norms that govern a society.⁷

Therefore, looking at the above definitions of law, we can see that laws are necessary in any society especially when the government is applying the rule of law, equity, good governance, protection of life and property of the citizens is needed in order to promote peace and harmony among the people.

. Justification of the rule of law for peaceful co-existence

The rule of law is fundamental for any functioning democracy. Adherence to it implies that governments are accountable by law and that citizens are equal under the law. A broad conception of the rule of law incorporates such elements as a strong constitution with constitutional limits on power, human rights, an effective electoral system, a commitment to gender equality, laws to protect minorities and other vulnerable groups, and a strong civil society.

Civil society came into being by the universal consent of all individuals in the state of nature. They all agree to surrender their right of self-defense and form a civil society able to establish a common government. According to Locke:

Whenever any number of men is so united into one society as to quit everyone his executive power of the law of nature and to resign it to the public; there and there only is a political or civil society. And this is done, where any number of men in the state of nature enters into society to make one people, one body politic under one supreme government.⁸

A civil society begins to exist when everyone in the state of nature has quit his natural right of self-preservation and also the power of judging and punishing offenders of the law of nature. This universal consent, that is, the submission of the natural rights, to live in an organized society is what John Locke calls

social contract. Hence, the onus of setting up an acceptable form of government falls on the civil society. In other words, it is the function of the civil society to establish a government and a rule that can stand out indifferently to judge offenders without compromise.

Governments should ensure the practice of the rule of law. This is primarily defended by an independent judiciary that safeguards human rights and the dignity of all citizens. According to social contract, leaders are to protect the lives and properties of their subjects and to make laws and policies in the same direction. They command the obedience of citizens in so far as they carry out this onerous responsibility. But as soon as they digress from it, they lose the followership of their subjects, as room is therefore created for the citizens to opt for change for such wrong laws or the entire leadership.

For as Aristotle opines: "Whether a state produces good life. It depends upon how its rulers behave."⁹

Laws are bodies of rules used to guide the actions of members of a civil society. Laws indicate actions that are permitted or accepted and also those that are prohibited, the performance of which attracts one form of punishment or the other. So, laws are necessary for peaceful co-existence of members of a civil society since they are instruments used for the reconciliation of naturally conflicting individual rights. In other words, laws are essential in any civil society. Laws demand obedience or compliance. It behooves on citizen legal responsibility, and it is expected that citizens should obey the laws of the state. Be it granted and accepted that obedience and grounding in legitimate authority are key features of the legal system.

John Locke tells us the essence of the political society and government:

If man in the state of nature be so free as has been said, if he be absolute lord of his own person and possession, equal to the greatest and subject to nobody, why will he part with his freedom, this empire, and subject himself to the dominion and control of any other power? To which it is obvious to answer, that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain and constantly exposed to the invasion of others; ... to unite for the mutual preservation of their lives, liberties and estates, which I call by the general name-property.¹⁰

John Locke also declares that whatever law that leaders are making must be: "...conformable to the Law of Nature – i.e., to the will of God, of which that is a declaration and the fundamental law of nature being the preservation of mankind, no human sanction can be good or valid against it."¹¹

The government should take the lead in upholding and strengthening the rule of law, subject to their respective mandates. In order to do this, they develop norms and implement initiatives that are meant to complement their commitment to democracy and affirm their respect for human rights.

Therefore if a government makes unjust laws, it loses the right of being obeyed by citizens. And when the citizens have tried in vain to change such bad laws through democratic channels, they are justified to take to civil disobedience. In fact, they will be unjustified to continue to obey. In the words of Martin Luther King, in his "Letter from Birmingham City jail",

One has not only a legal but moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with Saint Augustine that, an unjust law is no law at all.... An unjust law is a code that is out of harmony with the moral law. To put it in the terms of Saints Thomas Aquinas, "an unjust law is a human law that is not rooted in eternal and natural law."¹²

Therefore it behooves on the citizens of any nation to take to civil disobedience, after having exhausted all the provisions en-route democratic channels or when such political procedures of ensuring change in government laws and policies are closed. Civil disobedience is not disobedience per se. It is only disobedience to the extent that it bears the name "disobedience". It is quite distinct from criminal disobedience which is usually done secretly and with the hope of not being found out. But on the contrary, civil disobedience is usually a public, non-violent action meant to attract the attention of all, aimed at compelling government to change some perceived wrong or unjust laws.

Aristotle argues that "good laws, if they are not obeyed, do not constitute good government,"¹³ but he also clearly implies the reverse: "there are two parts of good government; one is the actual obedience of citizens to the laws, the other part is the goodness of the laws which they obey."¹⁴ Obeying the law does not in itself make for good government unless the laws themselves are good.

The value of the rule of law lies in the fact that it prevents arbitrary judgments, secures justice, and prevents tyranny and oppression. It limits the power of those who have authority. The government must control the people and then it must be obliged to control itself. The protection and promotion of human and peoples' rights is central to advancing respect for constitutionalism and the rule of law.

Constitutionalism denotes not only the rule of (and by) the law but also, importantly, respect for the fundamental freedom of individuals and groups.

Any political system built on self-interest is an invitation to chaos and anarchy. Any society that insists on the canon of self-interest as means of personal and collective self-realization is merely heading to ruin. Hence such a society is like "the proverbial kingdom that turns against itself."

This above assertion when juxtaposed with Plato's view of justice in the ideal state, it is a total contrast in his opinion. This emphasized the placing of the interest of the citizens before other things. The interest of the citizens in the state is prior to the leaders' interest. This means that egocentric tendency is totally erased from the political sphere of any democratic state. Therefore, governments are to fulfill their obligations towards the citizens in order to have a peaceful society according to Locke. The constitution in any civil society is the fundamental norm from which all other norms proceed. That is to say, it is the reference upon which the validity or legitimacy of acts or omissions are tested within the group. In its classical definition, constitution is rendered as "a collection of principles according to which the power of the government, the rights of the government and the reaction between the two is adjusted.

Emphasizing the functions as well as the need to ensure that any constitution produces the common good, Plato submits that:

The aim of the legislators in making-laws should be to create all the wisdom possible and eradicate all the un-wisdom or folly from the community. For there can be no greater un-wisdom in a people to hate what they know to be good or noble which they love and enjoy what they judge to be vile and wicked.¹⁵

Again, the core of the rule of law is fundamentally the principle that people are

not the idea that law should be capable of guiding people's behavior but more entitled to be treated with respect that their equal dignity as citizens demands

To achieve this, law must show a generality where all are treated equally in accordance to a scheme of justice enacted by the legislature. Not the idea that law should be capa

CONCLUSION

Good leadership is the soul of every nation; nations that lack good and effective leaders are no better than a soulless body. Leadership is extremely vital and central to the control, motivation and direction of every human society towards development, progress and meaningful achievement in all its affairs. It involves the ability to use initiatives to control, direct and influence the actions of men to a fruitful end.

Plato's main concern in his political philosophy is how a state is to be properly governed so that there would be justice and good society. He strongly believes that the achievement of this rests on the rulers and their ability to handle the issues affecting the state competently. He believes that such rulers can be produced but only through proper education. These men to be produced he calls philosopher kings. A philosopher king for Plato as Stumpf observes:

Should be the one who has been fully educated, one who has come to understand the difference between the visible world and the intelligible world, between the realm of opinion and the realm of knowledge, between appearance and reality.¹⁶

The rule of law has likewise constituted the yardstick to measure the level of individual rights and freedoms that the state has to not only provide, but at all times maintain them by securing their respect, promotion, protection and realization using all resources at its disposal through the establishment of institutions including fundamentally an accessible dispute settlement institution.

In the end, the rule of law invariably must serve as method through which there is an appropriate separation of powers between all the arms of government in a democratic setting for a better governance and peaceful co-existence.

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A Conceptual Analysis of the Rule of Law in Nigeria