

DON WALLACE

WHEN DO CITIZENS BELIEVE THEY HAVE JUSTICE AND THE RULE OF LAW?

We lawyers and legal scholars often believe that there is no higher purpose than achieving the rule of law, and we believe that the justice which it enables to be the *summum bonum*. We accept unquestioningly the motto of my University that “law is the means, justice is the end.” Then what do we make of the fact that even lawyers are unclear what the true meaning of the rule of law is, and that many of us harbor doubts that true justice for all is attainable. And does the normal citizen know what these notions mean, do they want them, do they care?

What in fact is it that most of us want in our lives? We want food, clothing and shelter, a better life for our children, meaningful work and the ability to serve others, good health, some rest and amusement, and yes security (law and order). We want to be free to worship our God, or not, and also to be left alone.

But the Rule of Law? Justice? What do the words even mean? Justice seems the easier one. If you ask what is a Just Society, that would escape most of us, but we want to be treated justly, fairly or at least not unfairly. That was the biblical Job’s lament. Of course for many Justice has other meanings: we want others to get their just desserts. While economists and others may want a just distribution of goods, or at least opportunities, more nobly we might settle for the parable of the vineyard: if I get enough, I will not envy others who have more. Justinian gave us these precepts: to live honestly, to injure no one, and to give everyone his due.¹

Don Wallace, Jr., Professor, Georgetown University Law Center in Washington, D.C., USA; Chairman, International Law Institute Washington, D.C., USA, e-mail: wallace@ili.org.

¹ Corpus Juris Civilis, Institutions I 3.

Are the “rule of law” and “justice” related, and if so, how? Let me quote from a talk I gave in honor of a retiring Chief Justice of Nigeria, which seems to fuse the two:

“Some have said of the “rule of law”, which phrase we cannot escape, and its constituent justice, that justice means fairness- possibly that is the case as between parties in a case or dispute, and maybe more generally. But I would submit that there is something more. As our Common Law societies think back to Magna Carta, as Muslim societies think of the Quran and the sharia, as Civil Law countries think of the Roman codices, we think of civil societies and their governors, striving to limit power and its abuses, striving to enhance liberty and order, so that we can get on with our lives, making them productive for the greater good. Our leaders must be suffused with this spirit, and seized of the limits of their legitimate powers. And it is the solemn task and duty of our profession- lawyers and advocates, contract drafters and negotiators, law makers and regulators, magistrates and judges, to create a legal system, a justice system accessible to all, to permit such lives to be led and to permit such a society”.²

A documentary video, about a project in East Africa, Justice Defenders, makes the connection graphically.³ The video describes the project, which is to educate prisoners (and guards) in prison. The prisoners participate in trials, playing all the parts in what appear to be actual cases, thus participating in the mechanics of the rule of law. One aim of the project is to train them as paralegals when they leave prison; some study law at university while in prison; another is to thus infuse a sense of hope into their lives. Some alumni of the program which has expanded beyond Kenya in whose prisons it started, and affects thousands, have even become crusading lawyers seeking to help others. Here is a true connection: delving into the workings of the rule of law leaves many of the prisoners and all the viewers of the video with a sense that justice can be done.

All too often, however, the connection between the rule of law and justice is not seen. Part of the reason has already been suggested. Neither lawyers, nor the ordinary citizenry are clear as to the meaning or content of either of the two.

For lawyers, as Mark Ellis, the executive director of the International Bar Association⁴ suggests, the rule of law, means the absence of arbitrary power, properly defined rights, and surely due process. Yet, even among sophisticated profes-

² Don Wallace, “Access to Justice as a tool for Development in a Democratic Society”, Inaugural Lecture, *Muhammadu Lawal Uwais Annual Lecture Series*, Abuja, Nigeria, November 29, 2006.

³ See www.cbsnews.com/news/covid-19-kenya-court-system-60-minutes-2020-12-20.

⁴ Mark Ellis, “Toward a Common Ground Definition of the Rule of law Incorporating Substantive Principles of Justice”, *University of Pittsburg Law Review*, Vol. 72, 2010, 191.

sionals, what is its relation to the ultimate purposes of life and the human condition, to the objectives of a sound and just society? The ideal of the philosopher is the virtuous individual, and the political philosopher will wish to define the society that makes that possible. It is possible jurisprudence, the philosophy of law, does not have much to say about that.⁵ I would suggest that the emphasis of the constitutionalist and lawyer is elsewhere today. Speaking for my country, I would nominate competitive processes, institutions and procedure as our subject: prosecutor or plaintiff v defendant leading to justice between the parties; separation and division of governmental powers to prevent tyranny and the exercise of arbitrary power; competition in the market place with supply and demand leading to a just price; the market place of ideas leading to truth which is a metric of justice. These are processes within which lawyers work. Throughout the world, lawyers seek a just result from courts, independent courts, for their clients, where judges follow the law wherever that will lead them, not telephone justice. We want fidelity to law. Sometimes lawyers strive to see something in a case, a behavior by judges that makes them believe they are getting due process, a fair shake on the facts of the case. Both lawyers and citizens, when they see this judicial fidelity to law, see the essence and the effect of the rule of law.

In truth the citizen may not know much about the superstructure, the working of government and the authorities, or the legal basis and limits of their authority. Even litigious Americans who want their rights vindicated by law, may not think much about what is right. Probably we do not reflect on the difficulties to gain access to law, a subject of my Nigeria talk. Those engaged in commerce and others will want their contracts enforced, their property respected. Those with little want government to treat them fairly, to admit a sick child to a hospital; enrolment in a school, to go to court, and the economic and other conditions which enable them to live their lives unhindered and their children to do better.

But, to conclude, what then about the attainment of real justice, where everyone always believes they are not being treated unfairly? Justice for all, whatever their religion or ethnicity, whether rich or poor, not “just us”. Utopia? I believe not. To be sure to have Justice, and to believe we have it, is not easy. First of all, we must all strive to live by Justinian’s precepts: to live honestly, to injure no one, and to give everyone her or his due.

And you, dear reader, and I, we are, in our studies and in all we do, duty bound to make the rule of law work for all.

⁵ Cf George C Christie, *Philosopher Kings? The Adjudication of Conflicting Human Rights and Social Values*, Oxford University Press, 2011.

Bibliography

- Christie G.C., *Philosopher Kings? The Adjudication of Conflicting Human Rights and Social Values*, Oxford University Press, 2011.
- Ellis M., "Toward a Common Ground Definition of the Rule of law Incorporating Substantive Principles of Justice", *University of Pittsburg Law Review*, Vol. 72, 2010, 191.
- Wallace D., "Access to Justice as a tool for Development in a Democratic Society", Inaugural Lecture, *Muhammadu Lawal Uwais Annual Lecture Series*, Abuja, Nigeria, November 29, 2006.