

ADMINISTRATIVE FAIRNESS

ADMINISTRATIVE FAIRNESS, JUSTICE AND GOOD GOVERNANCE: WHAT IS THE RELATIONSHIP?

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Abstract

The paper explores the relationship between administrative fairness and justice in conjunction with the modern concept of good governance. The analysis is based on reviewing the literature, research studies and practical experience of public organizations to explain and promote good governance and to identify different strategies dealing with it. As a result of the review two basic approaches for stimulating and encouraging good governance were identified. The “values approach” attempts to increase institutional integrity by promoting moral values and ethical principles in order to motivate public servants to behave in an ethically appropriate manner, while the “legalistic approach” is generally a top-down legislative process that establishes laws and administrative procedures and attempts to obtain compliance with them through legal sanctions. The conclusion drawn is that coordinated use of both approaches is required to have a significant impact on improving good governance, because if used alone neither approach is sufficient.

Key words: good governance, public administration, justice, fairness, ethical framework in public administration.

INTRODUCTION

The relationship between administrative fairness, justice and good governance is an important yet complex one. In part, this is the result of the ambiguity of the term good governance. While this is a term that is found in the literature of public administration, not to mention the popular media, with increasing frequency over the course of the past half century, it is not easy to either trace the roots or precisely define the nature of Good Governance. Among other reasons, this is due to some measure of ambiguity in meaning between the concepts of government and governance. Also, much of the literature on Good Governance, is purely descriptive. Increasingly however, it is assumed that governance describes “a situation in which the government is not in a position to direct and manage society alone”³.

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³ Gajduschek, G., (2015), Critical Notes on Four Major Theories of Public Administration as they Appear in Central and Eastern Europe, In: Contemporary Governance Models and Practices in Central and Eastern Europe, Covaç P., G. Gajduschek (eds.), Bratislava: NISPAcee, 2015, pp.166.

Surely, the term governance is not precise partly because different authors use it in different context. However, for the past three decades, the idea of governance was promoted and advocated for by major international organizations as the appropriate way to organize the governmental activities of a society. Often, this was because many of the governments with which they were engaged in development projects with were neither good nor fair in terms of their dealing with the average citizen of their country. It was assumed that by bringing the non-governmental civil society sector, as well as the private sector, into the broader processes of governing the society, this would inevitably improve the fairness, integrity and effectiveness of governmental functions.

The concept, which was termed “Good Governance”, first appeared in the vocabulary of United Nations’ development literature, as well as in World Bank (WB) documents in 1992 and in International Monetary Fund documents (IMF) in 1996 and initially all those documents emphasized different basic features of this approach. However, for several years relative agreement has been reached and now academic studies list, sum up and emphasize the major principles and the importance of participation, consultation, transparency, the rule of law, responsiveness and accountability as central to good governance and equally or even more important than administrative and service efficiency.

One may identify different strategies dealing with Good Governance and efforts to address issues such as transparency, responsiveness, accountability and legal certainty in the public sector. However, for the most part all such efforts have been mainly focused on the application of two basic strategies: a “legalistic” or legislative reform driven approach and/or a “values approach” that attempts to increase institutional integrity by promoting moral values and ethical principles as a way of motivating elected officials and public servants to behave in an ethically appropriate manner.

The legalistic approach, for the most part, is essentially a top-down legislative process that establishes laws and administrative procedures and attempts to obtain compliance with them through legal sanctions. The values approach more often is associated with a bottom-up focus within institutions, based on consensus-building on shared moral values and ethical principles. In this process of consensus building the participation of public servants is of key importance because it generates a sense of ownership and personal identification with the moral and ethical framework, which is essential for creating the intrinsic motivation necessary for self-imposed adherence to the norms promoted by the framework.

Many public sector international organizations like the World Health Organization (WHO)⁴ have prepared technical guidelines and manuals which propose practical procedures for improving the fairness, integrity, efficiency and effectiveness of governance in different public sectors. Similarly, many governments, especially at the local level have developed similar documents. In many instances, major non-governmental organizations like the American Society for Public Administration have done the same.

I. ON THE NATURE OF ETHICAL PRINCIPLES, MORAL VALUES AND JUSTICE IN PUBLIC ADMINISTRATION

The literature on this topic clearly indicates a difference between the moral values and ethical principles. It can be summed up in the following way: moral values inform judgment by defining right from wrong, and good behavior from bad, while ethical principles are the operational expression of moral values and provide required guidance to decision-making and action. In the public service, ethical principles operationalize values and thus serve as guides to action. Ethical principles have to meet some basic requirements in order to effectively guide decision-making.

These requirements have been well described by the political philosopher John Rawls⁵ in his book “A Theory of Justice”. They can be summed up in the following way:

⁴ Ethical Infrastructure for Good Governance in Public Pharmaceutical Sector, World Health Organization, 2006, at <https://apps.who.int/medicinedocs/documents/s14080e/s14080e.pdf>

⁵ Rawls, J., (1999), A Theory of Justice, Revised ed. Cambridge, Harvard University Press

Principles should be general. They should be stated in a general manner that does not limit their application with reference to specific individuals or associations. “Principles must be capable of serving a public charter of a well-ordered society in perpetuity and the knowledge of them must be open to individuals of any generation. Thus, to understand these principles should not require a knowledge of contingent particulars, and surely not a reference to individuals or associations.”

Principles should be universal in application. “They must hold for everyone in virtue of their being moral persons.” In this context, the term “moral persons” refers to individuals who are committed to the application of principles based on moral values.

Principles should be publicly known and accepted. They should be accessible to public knowledge and subject to public scrutiny and debate. “The difference between this condition and that of universality is that the latter leads one to assess principles on the basis of their being intelligently and regularly followed by everyone. But it is possible that all should understand and follow a principle and yet this fact not be widely known or explicitly recognized.”

Principles should impose an ordering on conflicting demands. “This requirement springs directly from the role of principles in adjusting competing demands.” The ordering of competing demands requires the judicious prioritizing of values and the application of principles.

Principles should have a condition of finality. “The parties are to assess the system of principles as the final court of appeal in practical reasoning. There is no higher standard to which arguments in support of claims can be addressed; reasoning successfully from these principles is conclusive.” This requires the development of the capability of moral reasoning, which is the capability to reason from abstract general ethical principles to resolve conflicts that arise from moral dilemmas and ethical problems.

These conditions can help one to better understand and assess the nature and effectiveness of ethical principles. As such, they may be used as criteria against which to evaluate the adequacy, relevance and validity of the ethical principles. They also provide a basis for understanding the main differences between an organization's ethical principles and administrative procedures, because ethical principles are more general and universal in nature, whereas administrative procedures are more specific and context bound. Ethical principles provide the framework for the development of practical operational procedures that accord with ethical practice and good governance.

The ethical framework proposed by WHO provides clear explanation and simple clarification for each of the values and ethical principles, but for the purpose of the present analysis it is necessary to focus on justice/fairness. In that regard, John Rawls⁶ provides a very useful reflection on the nature of justice: “Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust... Therefore, in a just society the liberties of equal citizens are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interest... Being first virtues of human activities, truth and justice are uncompromising.”⁶

II. THE RELATIONSHIP BETWEEN JUSTICE AND FAIRNESS IN PUBLIC ADMINISTRATION

The relationship between justice and fairness is briefly but clearly explained in one of the documents drafted by WHO⁷:

⁶ Rawls, J., (1999), A Theory of Justice, Revised ed. Cambridge, Harvard University Press, pp. 3-4.

⁷ Ethical Infrastructure for Good Governance in Public Pharmaceutical Sector, World Health Organization, 2006, at <https://apps.who.int/medicinedocs/documents/s14080e/s14080e.pdf>, pp.12-13.

Justice relates to the exercise of impartial judgment in determining the truth of facts and principles in making decisions that guide action. Justice is based on the two pillars of reward and punishment. Justice is concerned with giving each his or her fair due of reward and/or punishment. The institutions of society should govern by principles of justice. The application of the principle of consultation in the collective decision-making process is the operational expression of justice in human affairs in that the consultative process allows for the diversity of perspectives and information to be considered in the making of just decisions. The attainment of unity in diversity in society depends in great measure on the degree of the population's participation in collective decision-making through a consultative process. Thus, the consultative process is recognized as an essential requirement of just governance.

Fairness is the operational expression of justice on the individual level. The institutions of society administer justice on a collective level, while individuals attempt to be fair in their judgment and behaviour within their personal sphere of influence. Being fair implies the fulfilment of the moral responsibility to see through one's own eyes and not through the eyes of others, and to know through one's own knowledge and not through the knowledge of another. This concept of justice invokes the moral imperative to overcome prejudice and to search for truth in all things.

In the above mentioned document of WHO the key ethical principles of justice/fairness are outlined and briefly explained in the following way:

Rule of law: a legal order is a system of public rules "addressed to rational persons for the purpose of regulating their conduct and providing a framework for social cooperation. When these rules are just they establish a basis for legitimate expectations. They constitute the grounds upon which persons can rely on one another and rightly object when their expectations are not fulfilled." (J. Rawls). The governance and administration of any social enterprise must be realized within the framework provided by the rule of law. This precept establishes the obligation of individual and collective obedience to the system of public rules that define the legal limits of what can and cannot be done. Obviously, disobedience to the law leads to corrupt and criminal behaviour. Thus, a first question that should be asked when formulating governance policies and administrative procedures is whether or not they fulfil the legal requirement of the rule of law.

Accountability for the proper exercise of authority and use of public resources: a basic precept of justice is that people should be held legally and morally accountable for the fulfilment or lack of fulfilment of their contractual responsibilities. Such accountability provides a means of safeguarding society from possible abuses of authority and mismanagement of public resources. Formal procedures must be established to assure responsible, transparent and legal accountability.

Equity in administering rewards and punishments: justice is built upon the fair administration of reward and punishment in accordance with the merit of a person's or organization's behaviour. Thus the equitable degree of reward or punishment may vary in accordance with the just assessment of each case, on the principle of each according to their due.

Equality of rights and opportunities: this principle provides a "level playing field" for all without any bias caused by favouritism or prejudice. It protects the right of each to participate and allows for an equal starting point of opportunity. The application of this principle secures equal access to public services to all members of society. The universal application of this principle would prevent the injustices resulting from the various forms of prejudice prevailing in society.

Participation in the consultative process for collective decision-making: consultation is the operational expression of justice in human affairs, because it is through the consultative process that the diversity of views and voices within a social organization can be heard and taken into account in the process of collective decision-making. This allows decisions to reflect truthfully and justly the needs and aspirations of the members of the society. It is only just that the members of a society have the means to participate in making the decisions that affect their lives. The application of the principle of consultation provides such a means.

III. THE IMPORTANCE AND APPLICATION OF FAIRNESS IN PUBLIC ADMINISTRATION

In an era in which trust in government has been significantly declining in many countries around the world, the importance and application of fairness in public administration is a topic of special and critically important interest. Many public institutions like, for example ombudsman's offices have developed special handbooks on fairness or practical guides on fair practices. In large part, the reason for this is that governing has become increasingly complex, and government is subject to ever increasing scrutiny. Citizens have the right to expect that their governments at national, regional and municipal level will act in a fair, open and transparent manner.

A good illustration of this approach is the Handbook on Fairness for Manitoba Municipal Leaders⁸, entitled *Understanding Fairness*. It was developed to assist municipal leaders and administrative staff in achieving fairness in their important and challenging work. It serves to provide municipal leaders with needed tools to help promote fairness and make it the standard of practice. In this document fairness is presented as a concept with three components or parts, such as like a triangle with three sides or a stool with three legs. Each side or leg is an important piece of the whole – the structure would not be sound if any piece was missing or broken. In that respect, the three sides of fairness are procedural fairness, substantive fairness and relational fairness⁹.

Procedural fairness relates to the process by which a decision is made. At a minimum, procedural fairness requires that:

- the person(s) who will be affected by a decision is given advance notice that a decision will be made;
- the person affected by a decision is given the information that will be considered when a decision is made;
- the person affected by a decision is given a meaningful opportunity to state or present his or her case;
- the person affected by a decision is given an opportunity to challenge or dispute any information that might be contrary to his or her position when a decision is being made;
- the decision maker be thorough and thoughtfully review all the information provided by the person affected by a decision;
- the decision maker be impartial (unbiased and without a personal interest in the outcome of the decision);
- the decision maker gives meaningful reasons for the decision that are understandable to the person affected.

Substantive fairness relates to the decision itself and that it must be fair and that to be fair it must meet certain criteria. Some of the criteria are required by law, while others are matters of fairness. The following are some of the more obvious and straightforward requirements of fair decisions:

- the person making the decision must have the authority under law to make the decision;
- the decision cannot require anyone to do something that is illegal or not authorized by law;
- the decision must be reasonable, and the reasoning behind the decision must be understandable to the people affected;
- the decision cannot be oppressive, meaning that the decision should avoid creating unnecessary obstacles for the person affected;

The relational or “feeling” side of fairness is often at the centre of citizen complaints. This may result from a breakdown in, or a lack of, communication between the person making the decision and the person affected by it. People who feel like they are being treated badly are less

⁸ Understanding Fairness, A Handbook on Fairness for Manitoba Municipal Leaders, revised 2013, available on website at www.ombudsman.mb.ca.

and also on <https://digitalcollection.gov.mb.ca/awweb/pdfopener?smd=1&did=18575&md=1>

⁹ Understanding Fairness, A Handbook on Fairness for Manitoba Municipal Leaders, revised 2013, pp.6-8.

likely to believe that an action or decision affecting them is fair. Even if a decision has been made fairly, ignoring the relational side of fairness can result in a very strong feeling of unfairness. There is also a soft side of fairness which is about being courteous, timely, clear, and direct in communication. It means taking the time to listen, being approachable, respecting confidentiality, being clear with people about what you can or cannot do, apologizing if you make a mistake.

CONCLUSIONS

The following main conclusions can be drawn on the basis of the analysis on the relationship between justice and fairness as a part of encouraging good governance through effective public administration.

Many research studies and much practical experience with the two approaches to promoting good governance - the value approach and the legalistic approach - have shown that neither is sufficient if used alone. Coordinated use of both is required to have a significant impact on improving good governance and establishing ethical practices within an institution in the public sector. The complementary nature and mutual interrelationship of two approaches must be taken into account in developing any effort to improve the efficiency, integrity and effectiveness of government and the achievement of good governance.

The values approach focuses on promoting ethical practices in the governance and public administration. It fully recognizes the need to coordinate and integrate such endeavours with existing legislative efforts to establish a legal framework and ethical infrastructure that adequately addresses the problems of corruption within the context of each country. Fairness is the operational expression of justice on the individual level.

The institutions of society administer justice on a collective level, while individuals attempt to be fair in their judgment and behaviour within their personal sphere of influence. Being fair implies the fulfilment of the moral responsibility to see through one's own eyes and not through the eyes of others, and to know through one's own knowledge and not through the knowledge of another. This concept of justice invokes the moral imperative to overcome prejudice and to search for truth in all things.

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