

Is Effective Judging the ‘Bedrock’ of a Stable Society?

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Introduction:

Justice. It is an intangible yet personal force that governs every aspect of society. No matter who you are or where you live, you will always be inevitably tied to justice. Due to this, over time society has carefully constructed a scaffold by which justice can and must be channelled. This scaffold goes by the name of judging and is a concept integrated so deeply in not only the values of society as a whole, but also the morals of the individual. As judging and by proxy, justice is so vital to the very heart of society, it must be meticulously maintained by a trinity of constructs that have the sole purpose of ensuring judging is entirely fair and effective. The UK judiciary itself ¹ recognises and defines them as *‘Independence’*, *‘Impartiality’* and *‘Integrity’*. However, in this paper, I will be explaining them as similar concepts which may go by the names of independence, accountability and equity. These core aspects of society are vast and complex, but must be followed by every judge with no exceptions to ensure that society’s heart can continue to beat.

Is Total Independence Always Necessary to Effectively Judge?

The role of independence in society is paramount as it is an instinctive and moral force of human nature whereby we attempt to resist any tempting influences that may corrupt our thoughts, feelings and decisions. Before highlighting whether total independence is entirely necessary in every given situation, it is crucial that we first observe the definition of independence. Judicial independence may be explained as when a judge removes any form of external influence to come to a justified and impartial decision on a verdict which has been constructed solely on the basis of the presented evidence during the trial. Even the suggestion of any lack of independence from a judge is treated with upmost concern by the law. For example, an article on ‘independence’ from the UK Judiciary’s website ² clearly shows this when in the Pinochet case of 1999, *“even though there was no suggestion that the Law Lord was not in fact independent or impartial, the decision could not stand”* because the Law Lord had a *“connection with [an involved] campaigning organisation”*. This extreme caution the law has with matters of independence stems from the danger of the influences that pose a threat to judicial independence and by proxy, effective judging. More precisely, influences that interfere with the judging process may be categorised into two distinct groups, physical and direct influence compared to non-physical, indirect influence. Whilst direct influence is obvious in a case as it shows a tangible attempt to influence a judge, indirect influence may occur within the judge’s own mind and bias through existing links and / or relations the judge may have with any party in the case. This can therefore make it virtually impossible for any governing power, who may be able to prevent a corrupt judge from making the wrong decision, to detect. Not only this, but the methods themselves in which a judge may be influenced can also be divided into various subcategories. Some of these influences may be defined as economic influence, pre-existing personal relationships a judge may have with a particular group or party, or even the law itself. This may pose the question, how can the law be an influence if all influences are said to be negative? Well, it may appear this way at face value, however if you were to closely observe what makes an influence, you may find that the law can change the decision a judge makes the same way a bribe of money could. That being said, a judge may be initially swayed to make a decision in a case as it follows their moral

compass however if the law forbids that decision in that certain circumstance, if they are a truly legitimate judge, then they must abide by whatever the law states. This influence of a fear of consequence a judge may have when considering whether a decision they make aligns with the law may ultimately drive them to make an entirely different decision altogether. In summary, the law is not alive. This concept of independence as a feature of effective judging is not human but is merely a construct created by us humans in an attempt to catch any flaws in a human's arguably fallible and easily-persuaded mind. Despite this, us humans are able to do something the law could never - bend the rules when it is the lesser of two evils. This ability allows us to consider whether a key to creating a more hospitable society as a whole is to observe the bigger picture and question if we must fully constrict ourselves to the confines of legal documents. Perhaps to effectively judge in a way that will have a long lasting positive impact on society is not to never allow ourselves to open up to the opinions and ideas of others and our inner selves, but to determine whether complete independence is really ideal in a situation when comparing it to the values of justice, as that is what effective judging should be based on, after all.

Is Effective Judging Dependent on External Accountability?

In everyday society, we humans make countless mistakes and errors in our judgement, some small, and some large. As the weight of a judge's decision may weigh heavily on the backbone of society, effective judging requires a system to correct these errors when and where necessary. This system goes by the very name of accountability. Accountability within the courtroom means to assess a judge's verdict and evaluate not only whether their decision is misaligned with the rules of justice, but also, if their decision is discovered to be immoral or unlawful, whether they must be scrutinised or punished in any way for their decision. To further explore accountability, we must factor in the ideas of internal and external accountability. To better understand what internal and external accountability means and how they differ, a paper on accountability originating from the UK Judiciary's website³ distinguishes internal accountability as when "*more senior judges or courts*" hold a judge to account "*by way of...procedures for dealing with complaints about the conduct of judges*". In contrast, the paper cites external accountability as "*scrutiny in particular by the media, but more widely civil society*". In addition, whilst internal accountability refers to official, higher powers to the judge overruling a judge's decision which is seen as poor in the eyes of the law, external accountability instead calls upon a more informal presence, such as the opinions of the public, which is ultimately portrayed through the media to criticise a judge. External accountability is particularly present in higher profile, more publicised cases such as murder cases, in which a judge's even slightly contrasting opinion may spark controversy and anger with the public as a whole due to the emotion that may resonate with them in that particular type of case. However, it is very important to note that the public's influence may not always be welcome with the official proceedings of a trial. This would be because any sense of formality would be destroyed, also destroying the lawful legitimacy in the case, and in the process, causing more harm than good. For this precise reason, the paper on accountability³ also emphasises how the law reinforces the balance between accountability and formal legitimacy when stating that "*in accordance with the Act of Settlement 1701 judges...cannot be externally accountable for their decisions*" as "*such accountability would be incompatible with the principle of the independence of the judiciary.*" This paradox between external accountability and independence creates a visible dilemma. If the essence of effective judging is to ensure that the needs of both the law and society are satisfied, then do the law's ideals of independence hinder society's access to lawfully hold a judge to account, therefore disrupting

effective judging itself? Is it possible for external accountability and independence to coexist? The short answer is yes. Fortunately, the law additionally has a sort of ‘backup’ to enable external accountability to in a sense, act through internal accountability. This ‘backup’ exists in the form of the appeal and complaints processes. The paper from the UK Judiciary’s website³ claims that “*the appeal and complaints processes provide both internal accountability and accountability to the public*”. Furthermore, this process is crucial to the rights of the public and accountability as it allows members of the public to appeal a judge’s decision in a formal manner which will then be officially handled and reviewed in a way that does not fully disturb independence. To summarise, effective judging is an extremely delicate, yet intricate web, which relies on the relationship between the law and the people. Having considered how external accountability is so firmly engrained in society, it goes without saying that just as effective judging is completely reliant on independence, it is too and always will be deeply dependent on the presence of accountability, and in particular, external accountability.

Is Judicial Equality a Double-Edged Sword?

Effective judging embodies the pure meaning and route to absolute fairness in society. Subsequently, fairness and justice are essentially the role models for equality. More specifically, equity is the third and final in the key trinity of constructs that make up effective judging and equity, as well as equality, go hand in hand. Equity and equality, if used correctly, can work splendidly to complete and solidify effective judging in society through ensuring that every party in a trial is treated fairly and with upmost respect. Despite their benefits, if used incorrectly by a judge, the positives of equality begin to cloud the true meaning of equity in a trial, to the extent where it’s previous uses are negated and the framework for effective judging falls apart. Before delving into exactly how equality may affect the likes of equity, we should first fully observe their definitions. Equality plays a major role not only in the courtroom, but also in everyday society. It means for every person and given situation, no matter who or what is involved, to be able to reach their desired goals, aspirations, and when relating it to judging, their desired result from a trial. Moreover, equity’s similar position from the perspective of law is to provide everyone with the correct resources to suit their needs or circumstances in order for them to be able to achieve their desired result. However, there is one issue with how a judge might apply equality to a trial which is direly incorrect and should be prevented. The article including the core principles of the ‘Three Is’ from the UK Judiciary’s website¹ clearly mentions that “*Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office*”. The issue in this statement stems not from the statement itself as it is far from incorrect, but from how a judge may observe the statement. Due to the emphasis in law about how equality should be used by a judge, a judge may misconstrue this to effectively replace the needed application of equity, actually giving the opposite desired effect of what the judge may intent to achieve as doing this could very well result in the absence of fairness in a case. Equality should be used to ensure that two outcomes of two cases of a similar type originate from the same grounds of reason and so provide a similar result. In contrast, equity should be used to ensure that the different deserving parties in two given cases are not given identical resources to present their argument and depending on the case itself, are not given the exact same verdict, just two verdicts that suit the moral trend. In summary, equality and equity are very complex yet versatile ideologies that are extremely vital to maintaining justice and effect judging itself. However, there lies an insidious danger in equality to the extent where it may backfire if a judge uses it excessively, making it indeed a very useful but double-edged sword which can either be used to defend the integrity of effective judging, or be used to destroy it altogether.

What Happens in the Absence of Effective Judging?

Society functions upon a set of morals placed by its governing bodies. It is without doubt that for a stable society, these morals must be entwined closely into the law as the law is the tip of the hierarchy of society which influences every single thing that lay below it. The dogmatic importance of law can be shown in an article titled 'The Rule of Law Lecture'⁴ when exploring 'The judicial extension of the criminal law', which stated "*Dicey [(a jurist)] argued that 'a man may with us be punished for a breach of law, but he can be punished for nothing else' "*. This quote encapsulates the message that the rules, and therefore morals one must follow must be unequivocally correlated with and be legibly stated in the proper law as if these ideologies of justice are not printed into a society's law, then people cannot be penalised for not following them. This concept greatly applies to effective judging and hence, if the key models for effective judging (independence, accountability and equity) cannot be found within law, then there is nothing to restrict judges from neglecting them. For a judge to ignore even just one of the values of independence, accountability and equity would effectively reek havoc on society. When the people of society cannot achieve fair access to justice, they will begin to turn to desperate measures. If the people recognise just a few flaws that need to be corrected, then they may have more mercy in their contention against the judicial system. In this case, they may file complaints in an attempt to get their points of opposition across, or possibly protest in a peaceful manner in order to attract attention. They may do this as the point of protesting as a whole is to get the attention of the people or organisation you are protesting against so changes can be made. On the other hand, if the framework of justice in society is so corrupted to the extent where the people's continued protests and complaints are ignored, or to the extent where there was never any justice in society in the first place, then the people will begin to fight. In most circumstances, we generally see that if the law gravely fails its subjects, then they will actually begin to fight for justice in a series of violent protests to desperately get attention from any power they can. Unfortunately, if society's very fabric is ripped to this point where the people themselves are having to take law into their own hands because the judges and the people they previously relied on couldn't, then society becomes marked with a death warrant. When every framework in society had broken down, there are only two ways for the people to revert back to some form of normality. One way is to completely rebuild society again from the ground up with the help from other governments, which could take a long while. In contrast, another equally bleak way is for the people to abandon their society altogether, and seek refuge in the sanctity of others. Overall, effective judging and its core principles are necessary to prevent not only corruption in society, but also societal collapse as a whole which is why, for the bedrock of a stable society, effective judging absolutely must be included to ensure those who have the power to keep society afloat in a world of injustice, do not let it drown in a haze of temptation and false promise.

Conclusion:

In conclusion, society is held together by a chain of justice made from the essence of fairness, with one link being independence to protect the thoughts of society, another being accountability to prevent evil in society and the third being the likes of both equality and equity, protecting the rights and needs of society. Each link is related to and interwoven with each other link to create one fortified chain, a chain of which carries out its purpose unless just one of the links are broken. If this happens, the whole chain is rendered ineffective and

unusable until the day the singular link that has broken is repaired. In other words, society cannot visibly exist without effective judging, making effective judging the bedrock of society.

References:

¹ The article from the UK Judiciary's website on the '*Three Is*' can be found via the link:
[<https://www.judiciary.uk/about-the-judiciary/our-justice-system/three-is/>]

² The exact referenced article from the UK Judiciary's website, involving details on the mentioned "*Pinochet case*" can be accessed in the link:
[<https://www.judiciary.uk/about-the-judiciary/our-justice-system/jud-acc-ind/independence/>]

³ The article further detailing accountability titled '*The Accountability of The Judiciary*' from the UK Judiciary's website can be accessed and read in full from the below link:
[<https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Consultations/accountability.pdf>]

⁴ LawTeacher.net. The Rule of Law Lecture [Internet]. November 2018. [Accessed 12 March 2023]; Available from:
[<https://www.lawteacher.net/lectures/public-law/the-rule-of-law/?vref=1.>]