

Training Of Judges As An Element For Strengthening The Independence Of The Judiciary

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1) The Purposes of Law

The training of a judge is one of the means to reach the strengthening of the Judiciary Branch, so it can fulfill its existential mission, which is to distribute justice.

The ultimate purpose of the Judiciary, the ultimate cause of Justice, is social peace-making, the harmonization of social relationships. Therefore, the immediate purposes conducting one to this goal constitute characteristics that should support Justice: effective, quick, secure, cheap and accessible.

Effective Justice is that which effectively composes social conflict. It is a quality justice, making a right distribution of what fits whom, in a way to calm even the loser, who, facing the judge's solid factual juridical argumentation, recognizes that the right is not his.

Quick Justice is the one being done in a socially reasonable time, as late justice is injustice. Therefore, it is necessary to esteem the alternative means to solve conflicts in society, in order to relieve the Judiciary Branch, adjusting demand to the judges' examination capacity.

Secure Justice is that which does not oscillate, pointing now to one direction and then to another. Nowadays, the value "security" is held equivalent to the value "justice": we rather have firm precedents, even not fully satisfying, than oscillating precedents that seek the perfect solution but do not enable planning and anticipation.

Cheap Justice is the one that does not overburden taxpayers or litigants, that is, regarding the latter, the fundamental burden shall be the claimed right, but not the excessive cost of the jurisdictional activity.

Finally, accessible Justice is that which is spread over the national territory, easily understandable, not only by legal scholars, but also by those against whom the law is enforced.

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It is not possible to aim for a Strong and Independent Judiciary Branch, able to fulfill its existential mission, without it comprising the five characteristics that Justice should present. Justice without one of these notes would be a defective justice.

2) The Means of Law

And how will we achieve these goals? Through 5 essential means: judicial rationalization, simplification of appeals, managerial and technological optimization, consolidation of precedents and judicial training.

Judicial rationalization regards the creation of a judiciary model that promptly meets demands upon receipt. It cannot be so complex that loses sight of the Judiciary's purpose: to assist its client, the one against whom the law is enforced. Rational is the model that establishes double degree of jurisdiction as a right of the citizen, with collective review of a monocratic decision. Legality and constitutionality control carried out by Superior Courts and the Supreme Court is a right of the Federation, which can be a case to fix the normative content of the Law or the Constitution. There is no need to reexamine all identical cases.

Simplification of appeals arises from judicial rationalization, focusing on the reduction of appeals in order to better define decisions on 1st instance and improve the effectiveness of sentences execution.

Managerial and Technological Optimization is independent from legislative or constitutional modification, since it is focused on judiciary management: how to achieve, through simple standardization of routines, detection of bottlenecks, staff motivation and reallocation, state-of-the-art computer resources, going from the electronic proceedings to virtual proceedings, how to maintain the examination of received proceedings updated.

Consolidation of Precedents means the settlement of judicial decisions from higher instances in abstracts of solved precedents that, by settling the juridical discussions, work as a guide for lower instances and prevent the proliferation of demands and appeals.

Finally, Judicial Training, as constant qualification for the judge to perform judgment, focused not only in the acquisition of intellectual virtues, related to technical competence, but also of moral virtues, related to the judge's ethical profile, essential to develop the trust of those who come under the judge's jurisdiction.

While the first four means focus on the system improvement, the last one stresses the judge's technical and ethical enhancement as one of the main tools to get to a quality jurisdictional service.

3) Judge's Technical and Ethical Training

To talk about ethical enhancement may be shocking for those who see judges as an embodiment of probity, finished model of honesty and justice, as this last virtue would be embedded in the adjudicatory activity itself, *conditio sine qua non* for any intention of distributing Justice.

Such scandalous point of view is based on a legalistic concept of Ethics, with a Kantian stamp, conceiving it as a set of duties and prohibitions, following the Boolean algebra, in compliance or non-compliance with the standard.

Such point of view is very far from the Classical Ethics, founded in Aristotle and supported by the acquisition of moral virtues or good habits, incorporated by the repetition of good acts. Instead of duties to perform, which are requested, it sees qualities with which to comply in order to achieve technical and ethical excellence.

In this sense, in a pessimistic view from the Ethics of Duties, the Ibero-American Code of Judicial Ethics, from 2006 (as well as the Code of Ethics of the National Magistracy, from 2008), may be another list of requirements for judges, of duties that shall be requested from them, most of the times onerous and inconvenient.

However, in an optimistic view, founded in the Ethics of Virtues, the same codes list, in fact, the qualities the judge seeks to acquire in order to be fair and sensible.

Every candidate for the judicial career naturally possesses an ideal of judge to be achieved. To do so, study is not enough, since it leads only to the acquisition of technical competence. The ideal judge is the one combining technical competence with moral excellence. To think about the ideal judge is to think about the person to whom we would entrust our cause. What are his virtues and qualities? These are the virtues and qualities that the candidate for judge and the acting judge should try to acquire.

4) Judicial Virtues

And which virtues are these? The Magistracy Code of Ethics lists, in its principles, these essential qualities to the adjudicatory activity, which could be compacted into 7 basic judicial virtues: independence, competence, institutional responsibility, integrity, prudence and diligence.

Independence is the judicial virtue characterized by the ability to decide unbiasedly, based only in the Law, without being influenced by others, whether favoring one of the parties or meeting personal interests.

Competence is the virtue acquired through habit of being constantly studying, getting to know and master not only the positive law, but also the general principles of law, fundamental human rights and correlated sciences to render quality jurisdictional services.

Institutional responsibility is the judge's active commitment with the good operation of the judicial system as a whole, preventing unnecessary appeals to a higher instance and not forcing the parties to file inessential appeals, which can be achieved

through the judiciary discipline, involving the application of pacified precedents, conditioned to understanding in order to avoid the extension of demands whose final result is already known.

Integrity means that the judge shall live, in his private life, the same justice he shall distribute when wearing his robe, assuming decorum and behavior compatible with his position, in order to inspire public trust.

Prudence is the habit of making decisions rationally justified, after meditating about and appraising pros and cons related to the claims, considering the judgment of consequence, which implies reflection upon social impact of his acts and decisions.

Diligence is the virtue of solving proceedings within reasonable time, punishing delaying practices, also implying non-assumption of obligations and commitments that may impair timely fulfillment of the duty to judge.

By presenting the list of virtues or principles to be acquired and observed by the judge, it may seem that a lot of them are antagonistic: How to make celerity compatible with prudence and quality in the jurisdictional services? How to esteem simultaneously the constant search for Justice and the juridical security regarding decisions? Is it possible to be independent if it is necessary to comply with the judiciary discipline? How to adjust procedural demand to a judicial work schedule that does not compromise the judge's health and other family and social duties?

It is as Aristotle used to say in his *“The Nicomachean Ethics”*, virtue is at the apex between two extreme points of excess or insufficiency. Certainly, there is an ideal balance point between virtues apparently contradictory. That is why the symbol of Justice is a scale, which only finds its balance when each person gets what it is his by right.

5) Judge's Ethical Profile

A judge living all these virtues is a judge that can be trusted. The adjusted and balanced scale. The ideal is high, but is the secret for the judge's personal accomplishment and for the fulfillment of his social mission, entrusted to and required from him in the future.

The judge's effort through time to accomplish his mission better and better shall, thus, be focused on both the intellectual virtues, through a deep knowledge of substantive and procedural law regarding his specific field, and the moral virtues, qualities that enhance social interaction and human relationship, improving them.

As a matter of fact, the big professional problems are not technical problems, that can be studied and solved, but relationship problems – susceptibilities, envies, jealousy, vanity, greed, ambition, indolence, lust, intemperance, etc. – compromising even technical solutions. Many times the best technical solution for a certain problem is dismissed because of the idea's paternity: envy and vanity prevailed over rationality.

Moral virtues are exactly salt that provides taste and oil that lubricates social relationships. Regarding judges, their mission is to compose social conflicts, they should be experts in human relationships, people admired for their good relationship with co-workers, employees, parties, lawyers and prosecutors. Without moral virtues, however, none of this is possible.

Aristotle, in his *"The Nicomachean Ethics"*, says a lot about friendship as an ideal of human relationship, and, in *"Politics"*, he proposes, as an ideal for the government, that citizens should be friends, that is, they should live fraternal relationships.

The judicial virtue that summarizes and covers all other is integrity, which makes the judge a one piece man or woman, who fully performs all his or her duties: professional, family, social and religious. More than that: he or she does not see duties, but opportunities to serve God and his or her fellow-creatures, in what Viktor Frankl, a Viennese psychologist, highlights as the need for motivation of the human act (*"Man's Search for Meaning"* – 1989).

Obviously, nobody requires from a judge a divine perfection, well pictured by the American legal philosopher Ronald Dworkin, when conceiving the image of *"Judge Hercules"*, with superhuman ability, knowledge, patience and sagacity (*"Taking Rights Seriously"* – 1977); but we cannot deny that the judge, for the role he plays, should have the most refined ethical sense among all other professions or occupations the human being is able to perform, except for the religious service.

In fact, a doctor is expected to heal diseases, being health his raw material. An engineer is expected to build solid buildings, being mathematics, among others, his raw material. His moral behavior does not directly impact the result of his work. The same is not valid for the judge. A judge is expected to *"give each person what belongs to him"*, being justice his raw material. If he does not practice justice in his private life, who guarantees that he will not, in John Rawls' words (*"A Theory of Justice"* – 1971), give in to the temptations of fear and the desire to decide?

This last American legal philosopher reviews the 4 cardinal virtues proposed by Aristotle (*"The Nicomachean Ethics"*), summarizing them in the core of the judge's activity: decide at each moment (prudence) which is the right of each person (justice), overcoming temptations of fear (fortress) and desire (temperance).

The ideal, as it is possible to notice, is ambitious. The goal is high. But if we do not aim high, we will not achieve even the less daring objective previously proposed. It is worthy, thus, to face Ethics from the new and classic point of view about virtues, as a mean to promote personal and social happiness in the performance of the noble function of judging, as well as any other juridical and non-juridical profession.

6) Legal Deontology Courses as a Factor to Strengthen the Judiciary

In Brazil, the Amendment no. 45, from 2004, to the Federal Constitution of

1988, which promoted the Judiciary Reform, acknowledged the need to invest in initial and continuing qualification of judges by creating the two big National Schools of Qualification and Improvement of Judges, which work together with the Superior Court of Justice (ENFAM) and the Superior Labor Court (ENAMAT).

ENAMAT, the first to be established (September 2006), had, in its curriculum, the core composed by the following classes (in line with the scholastic *trivium* and *quadrivium*), which are not lectured in the courses of Law Schools in Brazil and are directed specifically to the qualification of judges: Legal Deontology, Legal Logics, Legal Language, Legal Management, Techniques of Conciliation, Psychology and Communication and Legal System.

As a conclusion and a real proposition for this Congress, I suggest that the qualification courses for judges stress the “Legal Deontology” with the optimistic line of the “Ethics of Virtues”, which shall contribute to an Independent Judiciary that Pacifies Social Conflicts.

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