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JUSTICE REFORM IN THE ARGENTINE REPUBLIC

*Raul Granillo Ocampo**

I. JUSTICE: VIRTUE AND VALUE

JUSTICE is not the only cardinal virtue aimed at providing each and everyone with his or her fair share. Justice succeeds in that aim, undoubtedly. But there is something more to justice than that, because it has unlimited effects, and because it embraces, simultaneously, all other virtues. To say it simply: what is fair is good. A fair person distinguishes what is good from what is evil, when he holds to this and rejects that. His ability to perceive and to draw these differences indicates his prudence.

But, apart from this, a fair person knows how to overcome fear. This does not mean he will not feel fear, but rather, he will defeat it. Above his human weaknesses, will rise determination. Nevertheless, he does not allow imprudence to lead him into dangers without considering their magnitude or without previously sizing up his ability to encounter them. In this way, he avoids inexcusable behaviors that belong to the province of negligence. This is why he will also have strength.

Finally, a fair person knows how to behave so that reason rather than emotion governs his existence. He will not follow his appetite, because he will have learned how to tame it by means of his methodic and orderly understanding. Then, he will possess another attribute: temperance.

A perfect and universal justice belongs to the domain of God, because He arranges everything through His providence. He governs every single thing with love, leading it toward His perfection. On the other hand, human beings, constrained by the imperfections that arise from their own limitations, can only strive to imitate the justice of the Creator, who made man after him, not from the material point of view, but through the everlasting qualities of the soul. These qualities allow humans to rise above earthly life as masters and lords of all things animate and inanimate. Therefore, the more a person grasps the meaning of what is fair, the wiser he becomes.

The kind of justice born out of sheer nature, which reason can reach governs social life. This results because humans do not only live on their own, but they also live together with others. This characteristic, which comes from the human's social nature, generates social life, in which

* Minister of Justice of Argentina (1997-1999).

others' integrity, dignity, and will command respect as strongly as that of a holy place.

The government, which comes from a determination of its components and which governs them, has a mission: to strengthen, by paying respect to everyone's rights, and by ensuring that solidarity prevails in social life. In that kind of government, which results from popular will, justice must stand for its main role. This is why, together with the political branches of Government, from the one that produces impersonal and abstract rules for the whole territory and its inhabitants, to the one that executes laws, a judicial branch exists to provide solutions to claims among people, and between the people and its government. That is, the judicial branch tells you what is your fair share. The judicial branch, which must be wise, prudent, fair, independent and impartial, was created to give each and everyone his or her fair share.

The bandage that covers justice's eyes is not meant to have her ignore the values that must be balanced, nor is it meant to have her overlook the individual or the personal characteristics of the parties involved. On the contrary, it aims at producing an impartial and lawful decision, issued after analyzing all those circumstances that are necessary to come to a solution. In achieving this goal, justice must be blind and strong before passions and influences try to neutralize such a high objective. If justice succeeds, the judge, through his decision, will not only have a scientific judgment prevail, but he will also have the judgment of his conscience prevail, a far more valuable goal.

II. TRANSFORMATION

Achieving the important goals I have set forth requires that the people and government of my country participate in the transformation of judicial administration to turn it into an efficient service. In doing so, the rule of law, (*seguridad juridica*), strengthens. This is the component without which any democracy (*Estado de Derecho*),¹ no matter its geographical location, becomes a formal entity, devoid of substantiality. For this reason, bearing in mind the socioeconomic reforms that have been carried out in Argentina, a judicial reform cannot wait. In light of the urgency and the dimensions of the issue under consideration, the initial steps have already been taken to provide the Judiciary with the necessary tools to develop the mission assigned by the Constitution with a maximum degree of capability and specialization. The transformation has begun. The Judiciary must have the fundamental tools, such as personnel and material resources. These tools are essential not only for the courts, but also for those experts who must assist the Judiciary with their scientific knowledge and technology. In this way, the mission will lead to good results, and this is an enterprise in which I believe the Argentine people

1. I doubt that the concept of "rule of law" (similar to our "state of right") exists only in English and that independent/autonomous term adopted by the doctrine for expression "lawful/legal security" exists, using unusually, "democracy" for "state of right."

give their support. But, in order to achieve the above goals, a number of questions remain unsolved. These questions relate to the following.

III. TODAY'S CONCERNS

The challenge faced by Argentineans remains complex. Various factors threaten the goal of adequate and effective administration of justice.

First, the number of citizens who bring their troubles to court seeking a solution continues to grow. The increasing number of diverse issues at stake causes a double effect. First, it increases the workload, and second, it increases the range of lawsuits that each court must handle. Additionally, the community realizes more social problems generated by new lawsuits, forcing courts to face issues which can be as old as humanity itself. These issues were kept at the level of domestic life, but now they are taken to court. Such issues include problems relating to the protection and assistance of children and the elderly and struggle against discrimination due to gender, nationality, ethnic group, religion or ideology.

Second, crime prevention and social cooperation needed for the recovery of the victims of violence are equally important.

Originally, the framework of the court structure was sufficient. The needs of the nineteenth century, however, are now obsolete. This is why they must be reviewed, especially in this era of rapid transformation at the edge of the twenty-first century.

The present situation brings about demands that warrant immediate attention. Examples of such demands include community counseling, the implementation of small claim courts, monitory proceedings, and docket reduction. The Judiciary has faced not only the lack of material resources, but also the continual increase of the workload, which may adversely affect work results since the resources are in such poor condition.

IV. THE ANSWERS TO THESE ISSUES

The answers to these issues are included in the justice system reform plan through four fundamental concepts: (1) effective access to justice; (2) the search for personal interaction; (3) efficiency, and (4) quality.

A. ACCESS TO JUSTICE

Judicial proceedings require effective equality. It is not enough to provide theoretical or formal equality. An entire bill of rights is useless if the subject lacks the economic means that allows a person to file a lawsuit on economic terms reasonably equal to those of his counterpart. In discussing equal economic terms, I am referring to the litigant's ability to pay for judicial expenses. Even if the government keeps its judicial structure, the litigant pays for professional fees and common expenses. Additionally, cultural and economic gaps between litigants lead to inequality before judicial proceedings. One who possesses educational and financial advantages over his opponent presents a better case than one who does not,

because he, unlike his counterpart, will have obtained previous counsel from an attorney. Furthermore, access to justice is useful only if the decision-making process is reasonably expedient. It is not useful to obtain a favorable decision when the injury and its irreparable damage have already occurred.

The need for timely solutions to these issues accelerates the search for solutions. Such solutions, suited to the actual economic possibilities of the litigants, can guarantee the protection of their rights. Thus, new alternative dispute resolution schemes must supplement the traditional model. Simple cases especially need simple proceedings. For example, in a monetary proceeding, the judge decides on preventive injunctions and takes necessary steps to put the debtor's property under the court's control. The property is sold if the debtor does not obey a subpoena, or does so but gives a limited or insufficient justification. Certain proceedings, such as those related to road accidents with no personal damages or those which involve small amounts of money, can be solved after a single hearing where the parties produce evidence required by law. "Small claim courts" is another possibility. In cases of low economic significance, the interested parties must refrain from taking their case to court. If the amount at stake is less than a certain amount, such cases require special proceedings that take place before courts on a quota system. These proceedings must be simple, expeditious, and inexpensive. A simplified process of server mechanisms, subpoenas, conciliation and suitably empowered judges achieves the desired result. In Argentina, small claim courts seem to constitute the next step after the successful implementation of mandatory pre-trial mediation.

B. PERSONAL INTERACTION

To work efficiently, judicial administration must provide personal interaction between the litigant and the judge. The parties involved in a civil law case or in a criminal case are human beings. Notwithstanding the technical issues at stake, the judge must have face-to-face contact with the parties. Learning about a case by reading the record is different than learning about it through the person that stands in front of you. In the former case, knowledge gathered does not supersede written words nor does the judge reach the core of the case. Only through face-to-face interaction with the parties can the judge get to know their claims, endeavors, and experiences. Then, he can fully grasp the issues at stake. Personal interaction, however, presents an obstacle to a speedy trial. If the judge develops a personal interest in the case, the proceedings may lengthen because the judge handles only one case at a time. Nevertheless, personal interaction should not always affect the speed of the trial. With the aid of adequate information technology, unnecessary bureaucratic steps and excessive delays may be avoided. Information technology makes judicial decision-making faster because it allows the judge to manage the cases without other collaborators.

Oral proceedings also promote quicker trials. Until 1991, criminal proceedings, which were written and formal, caused many evils, such as morosity, carelessness, and an obsolete penitentiary system. The latter has undergone a recent transformation. The results of oral criminal proceedings, in quantitative terms, are long enough compared to the average length of the trials where the court is given an opportunity to arrive at a decision. But, I find it more important to point out the qualitative results, which foster the implementation of orality in jurisdictions other than the criminal one.

C. EFFICIENCY

Judicial administration requires efficiency. Without efficiency, judicial administration makes no sense. In terms of gross product, Argentina allocates twice as much to judicial administration as other more developed countries such as the United States, Spain, and other European countries. But, this is not only a financial concern. It has to do with the correct assignment of resources, either material or human. Justice must achieve its mission using only resources that are absolutely necessary.

As S. Pastor said, judicial administration will work efficiently in those situations in which it is not possible to increase the judicial protection of the rights and of the other products of this organization with the resources available or, alternatively, that situation in which it is not possible to reduce justice costs without altering the level of protection available. He affirms that the goal of judicial policy will be the maximization of access to justice, given certain resources, or the minimization of social costs involved in the process, given a certain level of judicial protection.

Sherwood, Sheperd, and De Souza stress the fact that judicial system efficiency must include: (1) access to justice guaranteed for the maximum number of persons; (2) a resolution in reasonable amount of time; and (3) an adequate solution. In seeking efficiency, I must refer to the Judicial Council and to the Magistrates' Jury, which were created after the 1994 Constitutional Amendment. The Judicial Council selects judges of the lower courts by submitting a binding list of three candidates to the Executive. From that list, the President chooses one. Additionally, the Judicial Council is responsible for the administration of the Judicial Branch and the removal of judges, a decision reviewed by the Magistrates' Jury. Similar to judicial administration, the selection and removal of judges must be impartial, independent, and objective. Further evidence of progress in this field is the creation of the Judicial School, aimed at caring both for the education of the candidates and for the training, specialization, and continual education of judges, officers, and non-judicial court personnel alike.

Another transformation aimed at effectiveness² exists in the changes

2. R. SHERWOOD, ET AL., *Judicial System and Economic Performance*, Feb. 1994. In the original in Spanish, "efficiency inactivity."

that have taken place in criminal proceedings, which are now more and more accusatorial. This transformation consists of transferring accusatorial functions from judges to district attorneys. Judges may actually care for the rights of the suspect or accused and the lawfulness of the proceedings. Trial by jury, a constitutionally protected right that has never been enforced, constitutes another solution toward achieving efficiency. Trial by jury will add not only common sense to proceedings, but also the social element to aid the process. A clear distribution of duties and an effective selection of district attorneys, judges and juries achieves efficiency. Both the growing difference between the public opinion's verdict and the foreseeable result of the trial and the excessive protagonism of some judges will be eliminated.

Obligatory mediation proceedings also add to efficiency. In mediatory proceedings, the parties resort to a randomly selected registered. Parties can only file suit if mediation fails. Mediation provides various benefits such as diminishing the workload of the courts, which contributes to a speedy trial.

The Legislative Branch, which has already passed the Labor Mediation Act, is considering a Family Disputes Mediation Bill, and there is a newly established National School of Mediation. Also, the Ministry of Justice is working on community mediation and community counseling. The goal is to establish, at the neighborhood level, a proceeding similar to the obligatory mediation. Local life solidarity, the particular cultural environment, and face-to-face contact between parties favor community mediation. The Integrated Community Counseling Centers provide the community with legal counseling and guidance by furnishing community mediation and judicial protection. Community mediation, as an alternative dispute resolution, promotes the creation of informal networks that strengthen social links. The main actors are the representatives of the very community producing the dispute. A neighborhood representative reconciles parties involved in a neighborhood-generated dispute. Whenever those disputes cannot be solved by the community mediator, the parties obtain professional counseling from lawyers assigned to the judicial protection program.

V. FINAL REMARKS

Justice and solidarity are values that build a growing and comprehensive relationship between government and its society. In social life, they are the expected result. They are the concepts through which the common good must be achieved. As far as those values reflect the collective conscience, the performance of the transformations will not only be simple, but also natural.

I would like to conclude by recalling what I stated in a publication in the Argentine Public Administration Review, edited in Buenos Aires, en-

titled "Democracy, Justice and Rule of Law:"³

[I]f the rules that govern human behavior, issued by the Government, do not aim at reaching the justice human beings long for, what is the point of creating a machinery such as the judicial one to apply them, which implies an enormous expenditure of resources; what is the point of continually generating jurists that train to become judges concentrating on this all of their efforts; what is the point of having other law professionals, such as counselors or attorneys, petition before the courts on behalf of their clients for the interpretation of laws that do not provide fair or ethical solutions to the parties involved; laws which are what they are, that can be modified by others that, the same as the previous ones, do not provide valuable solutions or improve or benefit the parties just because they are aimless, even though they exist and can be enforced; their content is indifferent: it is only enough to have them issued by the right branch of Government, following the constitutional procedures.

Because what really matters is the claim, the ethical and justice-based goal sought for; to reach it, law is created not as an aim but as a means of action, as a proceeding fit to reach the desired objective, which is far above it; because, after all, law is no more than the road taken to reach the goal pursued; this is why those that only stay on the road, lose track and wander aimlessly, pointlessly, unreasonably, because that road leads nowhere.⁴

3. SANTOS PASTOR, *Sistema Jurídico y Economía: Una introducción al análisis económico del derecho* 227 Tecnos. Madrid (1989). In the original in Spanish, "Social Security."

4. *Id.*

Comments

