

Supreme Courts of the Americas  
Organization: Judicial  
Independence and its  
Relationship  
with Legislative Bodies

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# **SUPREME COURTS OF THE AMERICAS ORGANIZATION: JUDICIAL INDEPENDENCE AND ITS RELATIONSHIP WITH THE LEGISLATIVE BODIES**

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The intervention of the Administration in justice makes men depraved and at the same time tends to make them revolutionary and servile.

Alexis de Tocqueville

Independence in the exercise of the jurisdictional function constitutes the basis of the constitutional architecture of the judicial branch. However, it has suffered certain distortions which have lead, in more than a few cases, to its denaturalization. Its status as a capital principle for the exercise of democracy and as foundation for the rightful state places in both as a defense mechanism and as an attack spearheaded in the practice of "checks and balances."<sup>1</sup>

The persistent attacks of those who, entrenched in their political power, want to continue a tradition of subjugation of the judicial power to the other branches of State, have led to a "shielding" of the judicial powers against the action of other public functions. From this angle, in the case of democracies in transition, which is the situation in quite a few Latin American countries, the independence of the judicial branch can be misunderstood and badly used. On one hand, it can serve as a license to submerge the judiciary function in isolation and, on the other hand, it can build obstacles in the harmony between public branches.

Independence must be thought of as a two-way relationship with respect to other public functions: Respect for the other branches exercising functions under the law for the preservation of the equilibrium between them, but, at the same time, as an aperture for harmonic collaboration between the branches for compliance with the citizens' demands, which increase every day.

An approach of this nature will allow us to surmount the multiple barriers that have appeared in legislative-judicial relations and will open possibilities for exploration in a new field in the science and practice of the exercise of government. The great absence in the treatment of this matter on both the theoretical and practical levels is proportional only to the lack of communication between its protagonists: judges and legislators. All this is clearly reflected in the independence of such branches, the achievement of the goals of the State, and the consistency of public policies.

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<sup>1</sup> See, e.g., CHRISTOPHER COLLIER & JAMES LINCOLN COLLIER, DECISION IN PHILADELPHIA, THE CONSTITUTIONAL CONVENTION OF 1787, at 50 (1986).

## I. JUDICIAL POWER AND LEGISLATIVE POWER

The notion of judicial independence implies, among other things that the judge must not be subordinate to anything but the law. This reference encapsulates multiple aspects: political independence from the executive branch; functional independence from other judicial bodies; economical independence from other branches, etc. The relationship between the judge and the law signals an environment of action of the judicial function, which obliges him to refer the fulfillment of his duty to the object of legislative function.

The intrinsic relationship between the activity of the judge and the actions of the legislator mirrors in principle even the executive function itself. Thus, its natural source will be the law, with all that this implies. The classic letter from Jefferson to Madison dated March 15, 1789,<sup>2</sup> raised the risks of a relationship that was already seen as insoluble and precluded by the legislative faculty. Jefferson said that, "the executive power in our government is not the only, and neither perhaps, the main objective in my plea. The tyranny of legislators is currently, and for many years to come, the biggest danger. That of the executive branch will have at its own time, but in a more remote period."<sup>3</sup> The latter would speak not only of the abuse of the executive branch at stripping certain legislative functions, but also of the unlawful meddling of the other branches in the exercise of the judge's functions.

Without lessening what is mentioned above, and within the historical context, we can affirm that last century saw an expansion of Parliaments as organizations that increased their powers in an excessive way, confirming Jefferson's fears. The twentieth century has kept up with the expansion of the executive branch and ways to control its predominance. There already are those who announce –and it is hard to refute– that, given the need for equilibrium between the powers and the priorities indicated to the rightful state, the next century will belong to the judges.

The simple law of compensation would indicate that such should be the course. From gristmill in the public process to silo of the Executive and conveyor belt of the Legislative power, other better stages have to hope for a power whose resurgence is being experienced in the most diverse systems. To mention only the contemporary principle of "self government" in the judicial branch, is sufficient to examine how the functions of government of the Judicial Power departed from the Executive Power in crescendo which begins in the Constitution of Italy,<sup>4</sup> France,<sup>5</sup> and invades the Greek,<sup>6</sup> Portuguese's,<sup>7</sup> and Spanish,<sup>8</sup> and by the nineties has already saturated most of the Constitutions in the Latin American region.

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<sup>2</sup> Thomas Jefferson, *Letter to James Madison*, March 15, 1789, in 12 THE PAPERS OF JAMES MADISON, 13.

<sup>3</sup> *Id.* At 14.

<sup>4</sup> CONSTITUZIONE (ITALY CONST), art. 83, reprinted in NORMAN KOGAN, THE GOVERNMENT OF ITALY 200 (1962).

<sup>5</sup> LA CONSTITUTION (FR. CONST.), art. 5-19, reprinted in JOHN A. ROHR, FOUNDING REPUBLICS IN FRANCE AND AMERICA 279 (1995).

<sup>6</sup> GREECE CONST., art. 29-44, reprinted in AMOS J. PEASLEE, 3 CONSTITUTIONS OF NATIONS 408 (1962).

<sup>7</sup> PORT. CONST., art. 136-141

The judicial power became during many decades /as hard as it may seem/ an order subject to the other powers. Even today, only a few days shy of the new century, the biggest challenge for Latin America is in continuing to support, in certain cases, direct interventions of the other public powers against the destitution of magistrates, political and customer pressures, budget cuts, and lack of acknowledgment of judicial decisions, while it continues the never ending battle of proclaiming the independence of its justice and liberating itself from the yoke of subordination.

Fortunately, the aspirations of democracies point towards constitutional systems that go from the impotence of the judicial power, the prepotency of the legislative power and the omnipotence of the executive power to more balanced systems of government, with strengthened judicial powers, modernized legislation and controlled and efficient executives.

## II. JUDGES AND PARLIAMENT MEMBERS

The ancients believed that the president of the supreme tribunal should sit in parliament to guarantee the independence of justice. In the United States, there was a time in which a high percentage of the federal judges had been congressmen.<sup>9</sup> In most Latin American countries, members of parliament still appoint or influence, directly or indirectly, the appointment of judges. From the point of view of their professional training, it is curious that most continue being lawyers.

In spite of the common factors mentioned above, however, there persists a symmetry in the critical perception of one another. "Violators of the electoral process" and "sellers of false expectations" are epithets that somewhat characterize their views of one another. However, the only undeniable aspect is the exclusive subjection of judges to the laws emanating from people's will when placing the role of the judges in a democracy is that their democratic legitimacy resides. On the other hand, as Carnelutti said, "a judicial order can be conceived without laws, but not without judges."

From the point of view of their interaction, the panorama appears more complete. The law is the guarantee of the right and tribunals are the guarantee of the law, although in a concomitant way, stages of friction appear between both instruments. The concrete fields of development of the conflict between jurisdiction and legislation are three-fold: the source of the law, the interpretation of the laws, and the ability given to judges to declare laws unconstitutional. But, paradoxically, the three themes open opportunities for collaboration and complementation when complying with the goals of the State, as will be analyzed later on.

Today it must be recognized that the role of judges and legislators, of the law and of the judicial decision, as well as of legislation in general and of jurisdiction have changed in the scope of a political process characterized by the forces of change and modernism.

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<sup>8</sup> CONSTITUCION (SPAIN C.E.), art. 54-63, *reprinted in* CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 54 (Albert P. Blaustein & Gilbert Flanz, eds. 1991).

<sup>9</sup> CORTEZ A.M. EWING, THE JUDGES OF THE SUPREME COURT 1789-1937, at 90-92 (1938).

### III. THE INFLUX OF THE SYSTEM OF GOVERNMENT

Without lessening the above, the influence of the characterization of systems of government, parliamentary or presidential, generates individualities that mark different orientations in the regime of collaboration of the public powers. For example, the judicial power lacks political importance in Great Britain.<sup>10</sup> The Lord Chancellor is Minister of Justice, Magistrate and Parliament member at the same time, and also appoints all the judges.<sup>11</sup> The judicial power is subordinate to Parliament, and thus, there is no separation of Powers.<sup>12</sup>

Antecedents of this type have maintained that the parliamentary regime has denaturalized the judicial function and failed to recognize the disposition and nature of the power entrusted with carrying out such functions. Having this as a point of reference, systems outside the parliamentary tradition can see errors and ambiguities that ultimately can finish justifying the improper meddling of one public function into another. It is worthwhile to project this to prevent falling into conceptual errors in relation to the influx of the systems of government in the guarantee of judicial independence.

### IV. THE QUEST FOR GOVERNABILITY

The theory of checks and balances cannot be conceived today on the margin of the modern world and of the current challenges and opportunities that the information technology, for instance, present to the processes of state reform. The opportunities for institutional strengthening, being called upon today by the public sector as a basis for its effectiveness in providing public services, do not allow bypassing the considerations about the quality of the process of government and the different strategies used to accomplish this goal. In spite of this, it is quite a new tendency to add legislators and judges to the core of the reform processes.

In concrete terms, from an analysis of the presence of a function in terms of public spending, it can be concluded that the judicial branch has grown more than the legislative, but both have multiplied their functions. Every day there are greater demands of the citizens and the exercise of judicial as well as legislative functions have experienced drastic changes when attempting to answer the public's claims. Neither is it a coincidence that phenomena such as the so-called "legislative inflation" and the simultaneous "devaluation of the law"<sup>13</sup> have opened the window for judicial decision in previously prohibited territory, which was the exclusive concern of parliaments.<sup>14</sup>

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<sup>10</sup> CHARLES HOWARD MCILWIAN, *THE HIGH COURT OF PARLIAMENT AND ITS SUPREMACY* 257-259 (1979).

<sup>11</sup> FRED L. MORRISON, *COURTS AND THE POLITICAL PROCESS IN ENGLAND* 199 (1973).

<sup>12</sup> *Id.* at 106.

<sup>13</sup> According to the expressions by M. Latournerie, member of the commission to reform France's civil code. Mitchell de S.O.I.E. Lasser, *Judicial (Self-) Portraits: Judicial Disclosure in the French Legal System*, 104 *YALE L.J.* 1325, 1332 (1995); Martin A. Rogoff, *The French (Revolution of 1958/1998)*, 3 *COLUM. J. ERU L.* 453, 462 (1997).

<sup>14</sup> Some have characterized this activist process of the judges as a tendency toward Americanization in Latin-American law. John Linarelli, *Anglo-America Jurisprudence and Latin America*, 20 *FORDHAM INT'L L.J.* 50, 51 (1996).

Institutional weakness is a common problem in both powers, and, in many countries, different tools are being used that allow them to work for the service of democratic government. But if anything is clear after many tries and some lessons learned, it is the priority acquired by the search and creation of common grounds to design, prepare and execute public policies. Consequently, the mutual understanding and communication between decision-makers and those who execute the policies is an irreplaceable device as means for success.

On the other hand, new scenarios and protagonist players in the scope of the new roles assumed by civil society opposite to the action of the public sector, demand, for instance, a greater democratization of the structures of judicial power, propose more civil participation for the surveillance of the representative function exercised by legislatures, more open and equitable electoral systems, judges elected by popular will,<sup>15</sup> trials by jury, and permanent protection by public surveillance and criticism through the extension of publication of judicial decisions. In sum, the role of the communications media, the lawyers associations, the faculties of law, and the so called judicial community in particular, is enormous at a time of alerting the legislative and judicial powers about the opportunity, need and convenience for reform and modernization of justice.

## V. COORDINATION WITHIN HARMONIC COLLABORATION

The guarantee of judicial independence will come from the hand of a greater understanding of the activities of the judicial power on the part of the executive power and especially by the legislative power. As Robert Katzmann has revealed, an interaction of that nature will allow for innovative institutional arrangements, which, as can be proven, are not necessarily a problem of constitutional engineering.<sup>16</sup> The violations of the principle of independence are more common in situations of lack of knowledge and mutual lack of understanding of the activities of the other power.

The relations are susceptible to improvement, and this is possible to achieve in the modern political societies without violating the principle of separation of powers nor, by any means, the principle of independence of the judicial power. However, separation of powers with interaction and dialogue for the efficiency of public policies is not a situation that can be attained overnight in a region such as Latin America, with a great burden of an authoritative past, with exceptional, almost permanent, legislative faculties, and assumption of jurisdictional functions by the executive in many chapters of its recent history.

## VI. SCENARIOS FOR COLLABORATION

Given all the above, both the defense of the principle of judicial independence and the possibilities of collaboration between powers are matters that should be submitted to the proper mechanisms of interaction between the branches of power. This includes categories beginning with the design of judicial policy itself as a shared effort of the powers; the appointment of judges or the confirmation by the legislature in systems such

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<sup>15</sup> Especially in the case of Justices of the Peace in certain Latin-American countries. Maria DaKolias, *A Strategy for Judicial Reform: The Experience in Latin America*, 36 VA. J. INT'L L. 167, 204 (1995).

<sup>16</sup> ROBERT A. KATZMANN, COURTS AND CONGRESS 2-3 (1997)

as that in the United States; systems of co-legislation through special categories of law—organic or statutory according to the respective constitutional system—to regular the juridical status of judges and magistrates; special regimes for promotions, inspection, disciplinary regime and right to permanent tenure; duration, salary and employee remuneration, etc.

One of the critical spaces for interaction is the treatment of the justice budget because of the sensibilities it arouses and the difficulties it generates in the legislative-judicial relationship. The system itself for the elaboration of the budget for the budget for the judicial sector marks the first step that is ordinarily thought of as the real consecration of the autonomy of the judicial power. Often, the budget is presented formally to Congress by the proper judiciary, or the project is presented to a specialized commission of the legislature or through the executive power to be included in the project that will be submitted later to the legislature.

In the same direction, many of today's controversies provoked in relation to the priority of judicial reform for a government have to do with the amount and composition of public spending in justice, with its increase through time, or with the assignment of percentages marked in the constitution as rents attached to this sector. The stubbornness of the deeds have demonstrated that such initiatives are not authentically representative of the political will of a state to advance a reform in the sector and even less of the success of such strategy. On the contrary, in the concrete case of rents specifically designated for the judiciary, they either become unachievable for the executive, or they become the great excuse for demonstrating that the judiciary itself is noncompliant, be it because of the inefficiency of the expenditure or because of the impossibility to execute a considerable amount of resources. Under none of these last circumstances can the independence of the judicial power be consolidated.

In essence, it is a much more structural problem that affects almost all of the judicatures in our region: the critical lack of information on what goes on inside the judicial powers, both in quantitative and qualitative terms.<sup>17</sup> The collaboration between public powers is therefore seen as notoriously affected. This is perhaps one of the greatest obstacles for dialogue with the legislative and executive powers. It is evident that the absence of empirical information makes any effort for strategic planning impossible, makes the reform of justice a catalogue of good purposes without analytical support whatsoever, and, in passing, prevents communication with functionaries of other powers who are specialized in the matter.

One of the most privileged common spaces in the quest for harmony in relationships is the exercise of the same legislative function. There, the constitutional systems open up great matrices to adopt such collaboration: the consultation function exercised in certain countries by some jurisdictional bodies, both for the executive and the legislative, the legislative initiative given to entities of justice in the process of preparation of the law,<sup>18</sup> public audiences as a mechanism to hear the spokesperson of

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<sup>17</sup> It is sufficient to examine the divergence of the authorities in relation to criminal statistics and the levels of impunity in society, for instance. David Garland, *Criminology, Crime Control, and "The American Difference,"* 69 U. COLO. L. REV. 1137, 1153 (1998).

<sup>18</sup> The tendency is oriented towards recognizing such initiative for matters directly related to the management of courtrooms and the judicial organization in general. It is not as clear in the case of procedural standards that have the ability to congest or at least engross the workload of justice

judicial corporations and keeping their opinions in mind, the measurement of the impact of the approval of laws and institutions on the workloads of judges, the work in specialized parliamentary commissions levels, etc.<sup>19</sup>

The design of a tool that allows splitting responsibilities from the point of view of complementing the exercise of legislative and regulatory functions is also important. Special categories of law, such as statutory or frame laws represent in many cases not only the recognition of a special hierarchy of judicial regulations, but also the need to deliver to the judicial powers the delegated or regulatory power of legislation in matters of its sole concern.<sup>20</sup>

## VII. THE FUNCTION OF RECIPROCAL CONTROL

The exercise of control exerted in many countries by the judicial power over legislative acts deserves independent consideration. Surveillance in compliance with parliamentary responsibilities and of its regimes of incompatibilities, disabilities, conflicts of interests and immunities, constitute a very contentious aspect of the relation between the two powers. In the later years, energetic and impressive actions by judges armed only with the power of the law have been seen, facing powerful political sectors which have fallen into conduct that violates not only public ethics, but the penal code.<sup>21</sup>

The counterpart for such control is the one exercised from the field of fiscal surveillance by agencies considered emanations of legislative power. In the General Accounting Office in the American system, the Comptroller's Office gradually receives new mandates that today lead them to perform not only the numerical and legal controls, but also more modern controls, such as those over proceedings and results.<sup>22</sup> In this matter it is evident that judicial independence must incorporate some notion of accountability and that the principles of efficiency, economy and efficacy must also be applied to the administration of justice. The tendency for the case of the recently created Magistrate's Councils or Judicature's Councils is also to settle some type of control over its members who head the legislatures.

But that which deserves the most consideration in the field of controls for its supposed propensity to invade the political sphere is the control of constitutionality.

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functionaries. Filipe Saez Garcia, *The Nature of Judicial Reform in Latin America and Some Strategic Consideration*, 13 AM. U. INT'L. L. REV. 1267, 1310 (1998).

<sup>19</sup> A good part of constitutions and/or congressional regulations, legislative assemblies and parliaments of the region foresee the existence of justice commissions. Farah Hussain, *A Functional Response to International Crime: An International Justice Commission*, 70 ST. JOHN'S L. REV. 755, 775 (1996). In the American system, however, a more useful formula for cooperation has been used, such as dialogue at a lower and less formal level between the assistants to legislators and the auxiliaries to judges. Mary Cate Rush, NCJC: *Toward a Vision for Justice* (last modified Oct. 2, 1998) <<http://www.ncianet.org/ncia/HIST.HTML>>

<sup>20</sup> Laws which fix general rules to be developed at a different level by the judiciary itself are a good example. Benjamin P. Fishkin, *Fishkin and Precedent: Liberal Political Theory and the Normative Uses of History*, 42 EMORY L.J. 647, 681-82 (1993).

<sup>21</sup> The decisions taken by the Supreme Court of Justice of Colombia in regard to irregular financing for various congress member's political campaign financing have marked a behavioral pattern to be followed by many.

<sup>22</sup> U.S. Gen. Accounting Office, *Effective Internal Controls: An Ongoing Commitment*, GAO/OCG-89-7 TR 26 (1988).

Dromi has said that it is the key to the political edifice, and within that analogy many believe that the landlord of such an edifice either uses it very little as a gesture of submission for the other powers<sup>23</sup> or has converted it into an instrument of co-legislation and even co-government.<sup>24</sup>

The other side of the control coin, often times not seen, is that it not only implies a decrease in legislative power, but also a strengthening of the authority of the controlled power, when the validity of many legislative acts are ratified. In this sense, the exercise of previous or automatic constitutional controls is a good way to call upon the constitutional jurisdiction to corroborate the constitutionality of a judicial rule.

An aspect that still baffles constitutional analysts and those who have constitutional power is the selection mechanism for the members of high tribunals, and particularly those who exercise constitutional control. In the end, any kind of dependence from political groups and parliamentary groups is hopefully avoided. Different experiences proclaim goods and evils of the system, and it could be said that a kind of ideal model would be the election by Congress of trios presented by the bodies presiding over judicial power.

## VIII. LEADERSHIP OF THE JUDGES

The reform of justice in our region is one of the fundamental pieces of the integral process of reform of the State, which began a few years back. The political character of its context, as well as its consequences, is undeniable. Such as is conceived of the labor of the execution of public policies in modern societies, it is no longer an exaggeration to say that the success of the development process will depend on the operation of the state of law and the compliance with the basic responsibilities of the public sector in that matter. Today, more than ever, the design of judicial policies must start with the clear leadership of judges as main characters of the reform strategy.

It is equally incontrovertible that such a reform binds the other bodies of the state in the same imperative manner, and demands that leaderships coordinate actions, lay bridges toward dialogue, and solidify consensus. This is especially so when justice reform in Latin America should be negotiated within the legislative power and the beginning of its destiny is defined there. Every day the judicial function weakens, maintained in a vulnerable situation which made it for decades the "dry branch of the state."

The alliances of the public powers have proven their strength to dominate in difficult situations. The sum of the legislative plus the judicial in many cases in the Latin American region has exhibited a great effectiveness to fight corruption and organized crime. Both on the level of accusation and judgment of high authorities in corruption

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<sup>23</sup> Which would be the case of Argentina, according to many others. Keith S. Rosenn, *Federalism in the Americas in Comparative Perspective*, 26 U. MIAMI INTER-AM. L. REV. 1, 50 n.21 (1994).

<sup>24</sup> The so-called "Judge's Government" has become a rhetorical resource to disqualify the exercise of constitutionality control. To some, it has meant the overflow of the control faculties, as is the case of the recent ruling by the Constitutional Tribunal of Guatemala, declaring unconstitutional the raises in the tariffs for public services of the judicial rulings to privatization. A. John Armstrong, *Unplugged? The Effect of the New World Electronic Power Order on Renewable Energy Industries*, 22 N.C.J. INT'L L. COM. & REG. 449, 462 (1997).

cases<sup>25</sup> and in the face of threats still pending over life in communities as a result of the epidemic of violence and crime, joint and coordinated actions by the two powers –even the three powers– always result in greater efficacy. Such alliances in the fight against urban violence, for instance, have allowed for the creation of true crime prevention, investigation and suppression teams on a local and decentralized level.

It is evident that the diverse powers of the state do not operate in a vacuum in the simple relationship of the interstate kind, but also work in interaction with civilian society. Audacious formulas for civilian participation in justice include not only alternatives for dejudicialization, but also experiments which bind openly the academy with the lawyers' associations and the users of the system to the selection of judges.<sup>26</sup> The mixed composition of the instances for magistrate appointment and control is also translated in greater transparency of their action.

Innovative mechanisms of cooperation between the powers include, for instance: annual reports to the legislative by the judiciary, as in Spain when the State of Justice is debated annually, presented in the Annual Memory of the Judicial Power, by the President of the General Council of the Judicial Power to the General Courts.<sup>27</sup> Experiences such as National Councils of Justice or that of the Three Branches are not alien to our tradition nor do they damage the independence of the judicial power. In this field, the leadership that formerly was acknowledged by the Minister of Justice or the representative of Justice in the Executive is now clearly displaced in the head of the jurisdictional organisms. Judicial reforms that ignore these facts will not be the result of true jurisdictional policies and their impact will be very modest.

## IX. THE IMPLICATION OF GLOBALIZATION

Much is said about the ways of multilateralism but little has been discussed about the impact on the new actors of the political process. The management of international relationships has implied the globalization of relationships, even among the new actors of the political a process. A judicial decision of a country can now affect the international community, violating, for instance, the minimum standards for development of the international community. Thus, the monopoly in the management of international relations by the executive opens the way for new instances of dialogue, interaction and creation of consensus. This way, the globalization of judicial power leads necessarily to the widening of international judicial space.

As it has been stated by Anne-Marie Slaughter, the judges are building a global legal community which transcends the spheres of the traditional state. The Supreme Courts of the Americas Organization (SCAO) is the best example of the kind of relationship that today joins common purposes and destroys the imaginary frontiers that the nation-state has left as a legacy. They are expressions of the world order, with

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<sup>25</sup> The participation of legislative and judicial authorities in the judging of the heads of the executive power in the last years has been a fact to highlight in the fight against corruption. William Ratliff and Edgardo Buscaglia, *Judicial Reform: The Neglected Priority in Latin America*, 550 ANNALS AM. ACAD. POL. & SOC. SCI. 59, 68 (1997).

<sup>26</sup> The best example is Ecuador's recent experience in the selection of its Supreme Court Magistrates. Judith Kimerling, *Rights, Responsibilities, and Realities: Environmental Protection Law in Ecuador's Amazon Oil Fields*, 2 SW. J.L. & TRADE AM. 293, 302 (1995).

<sup>27</sup> SPAIN C.E., art. 124.

potential to create supranational jurisdiction and goals. The judicial powers must prepare to conform to these types of new roles and the creation of SCAO is a good example of the path to be taken.

These are the real coordinates where the matter of the independence of the judicial power should be reestablished and not, for instance, in the parochial and debatable field of the corporate rights of magistrates. Part of the crisis in the judicial power, certainly, has been its special addiction to inadequate and obsolete procedures, but it is undeniable that its great liability has been the lack of a global concept of its mission in the stages of public policies.

A 19<sup>th</sup> century writer said, not without reason, that it was preferable to have bad laws and good judges than good laws and bad judges.<sup>28</sup> Within the framework of the constitutional reform process in Latin America, it must be highlighted more each time that a power of the nature of the judiciary must become the most transcendent axis of democratic constitutionalism in the next millennium.

Laboulaye said it well:

If you ask me what distinguishes free mature countries, for liberty from those which are not, and what distinguishes countries mature for freedom from those who are not a present, I will answer without hesitation that you should not pay attention to whether they have this or that constitution, one or two chambers, free press, etc. All of that can become instruments of passion or tyranny more or less disguised. The real distinction rests upon whether there is justice or not based on whether the law prevails or not. Tell me what the tribunals are like and I will tell you what the country is like.

To surmount the characteristic autism of the Judicial Powers in our Latin America, today the Organization of Courts of the Americas has written a page in the road of independence of justice, which is called to feed on unlimited doses of political will in the complex state of legislatures and executives that verify that justice has effectively come to life in Latin America.

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<sup>28</sup> PABLO DE AZCARATE, LEAGUE OF NATIONS AND NATIONAL MINORITIES, AN EXPERIMENT (Eileen E. Broke trans.) (1945).