

The Importance of Teaching Law and the Reinforcement of the Judiciary System in Haiti†

By DR. JOMANAS EUSTACHE*

I. Introduction

In a joint effort to better help understand the situation of law and justice in Haiti and consider how to eradicate the ugly plague of impunity in Haiti, the organizers of this symposium have asked me to reflect on the inseparable binome “Law and Justice.” Those who are familiar with the École Supérieure Catholique de Droit de Jérémie (“ESCDROJ”) know the importance of those two concepts. There is an essential connection between Law and Justice. Consequently, the absence or weakness of either can lead to impunity and finally to a lack of peace in society; as stated by Pope Pius XII’s motto: *Opus Justitiae Pax* (*Peace is the Work of Justice*). Unfortunately, some behavior, misconduct, or practices, are mainly facilitated by the malfunction of the judiciary system. Alas, these behaviors are all too frequent in Haiti, for example, preventive detention beyond constitutional or legal limits and the plague of corruption in almost all State sectors.

† Delivered at Symposium, Justice in Haiti: Accountability and Reparations, Hosted by the Hastings-to-Haiti Partnership, San Francisco, California (Oct. 23, 2008).

* Dean of École Supérieure Catholique de Droit de Jérémie. I would like to express my thanks and gratitude to the deans, professors, students, and personnel of U.C. Hastings College of the Law. In particular, I would like to thank Professors Richard Boswell, Karen Musalo and those involved in the “Hastings-to-Haiti Partnership” for their warm support, faithful commitment, and strong solidarity with ESCDROJ in order to help establish a rule of law and consequently a better administration of the judicial system in Haiti particularly in the most beautiful and attractive region of Jérémie. To paraphrase the Greek philosopher Pythagoras: *May no one come here, unless he or she wants to promote the cause of Law and Justice!*

During this symposium, I would like to highlight the urgency of the situation and the need for all interested sectors and individuals to act swiftly, legally, and with firmness to ensure and strengthen the basis of the rule of law and the judicial system in Haiti. The result would be the demolition of the foundations of impunity in Haiti. As a preliminary matter, a brief overview of Haitian history is essential to a better understanding of its current situation.

II. Brief Historical Overview of Haiti

Cujus regio, eius ius.

Law is never divorced from the community which it serves.

Given the inseparable relationship between law and the place where it comes into existence, it is very important to understand the history of the well known stormy or turbulent State called Haiti. Here, this is even more pressing because the most serious problems currently facing Haiti's administration and distribution of justice are rooted in the nation's complex political history.

Haiti - this little, poor, Caribbean country situated some dozen miles off the shores of Miami and recently hit by four devastating and merciless hurricanes - is the first black country in the new world to become independent. In 1804, after having fought its French masters for many years, Haiti broke free from the yoke of slavery. It is the second country in the Americas to become independent, after the United States. However, the time and way of birth of the Haitian State necessarily impacted its growth and maybe even its destiny.

Having not known another model of legal system and deprived of the necessary human resources to construct its own legal and judicial systems, Haiti's founding fathers inevitably adopted the French model of law commonly referred to as "The Napoleonic Code." This being said, we can easily give two interpretations to the Latin expression "*Cujus regio et eius ius.*" First, this can be taken either as an observation or affirmation of a truth: *Each country gives birth to its own set of laws.* In the alternative, this may be understood as a mandate or an obligation: *Each country must have its own kind of laws.* Unfortunately and surprisingly, neither of the two interpretations has been justified in Haiti's 204 years of independence.

A few decades ago, the country experienced a revolutionary era, passing from dictatorship to a state of democratization. However, despite the adoption of a new, democratic Constitution in 1987, Haiti has endured some serious social and political problems. Since democratization and economic reform were initiated during the government of former President Aristide, the importance of a fair and effective justice system to the realization of participatory democracy has been acknowledged. However, currently the Haitian population is dealing with a volatile and unstable economy and is still facing pervasive violations of fundamental human rights. As a result, the development of a system of law and distribution of justice has been seriously handicapped.

III. Importance of Law and Justice in a Society

La justice eleve une nation.

Justice elevates a nation.

We all know that law and justice are rightly considered the most important basis for the advancement and prosperity of society. Thus, to better understand the link between those two concepts, one must examine what they really mean.

A. *The Concept of Law*

The concept of law may encompass at least three fundamental meanings. First, law may be "natural law," or in other words, what is "just" or that which corresponds to justice (*Jus autem est dictum, quia iustum est*).¹ This first concept may also include law that protects what is mine or what is due (*Jus suum cuique tribuendum*).² Second, law may designate the subjective rights that derive from the *objective law*. The objective law is the set of rules that regulate the conduct of individuals whereas subjective rights are the capacity to obtain, own, to do or not do, to act or not in a certain way, to require or oblige someone to do or refrain from doing something. In other words, the subjective law is a privilege conferred upon an individual, which allows him to enjoy something as his own or to

1. ISIDORE OF SEVILLE, *ETYMOLOGIAE*, V, 3; PL, LXXXII, (199 in Pizzorni Reginaldo, *Filosofia del diritto*, Pontificia Universita' Lateranense, Citta' Nuova Editrice, Roma 1982, P.20).

2. Dig. 1.1.10 (Ulpian, *Libro Primo regularum*).

claim a benefit from someone. Finally, law may derive from the norm that establishes what is just. Law implements this norm in the form of a rule approved by the public authority, which is therefore civilly and legally mandatory. Law is then the result, or better, the set of those rules.

Dante Alighieri gives a splendid definition of law: "Jus est realis et personalis hominis ad hominem proportio, quae servata societatem servat, corrupta corrumpit . . ." (law is a relation between things and persons that is expressed in the relation between one individual with another individual, which if protected, protects the society, otherwise it will cause society's ruin).³ This definition is based upon the evidence of the necessary equal relationship between an individual and his fellow man. All forms of social life depend upon this relationship. If this relationship is respected, society will be strong and stable; otherwise, it will collapse.⁴ As a result, Professor Reginado Pizzorni rightly states:

The first foundation of an authentic social, economic, juridical and political order is the recognition of the fact the individual is the focal point, with his intelligence, freedom, personality and rights. Therefore, the central place it takes in social life. The individual is found and must be found at the bottom, at the center and the summit of the law's edifice. And because, it is profoundly human and universally present, law requires to be taken into great and responsible consideration.⁵

Now what about the concept of justice which is law's Siamese twin?

B. The Concept of Justice

According to Celsus, justice is the "art of the good and the equitable" (*ars boni et aequi*).⁶ And for Ulpian, one of the most famous roman jurists, it is the constant and perpetual will to give to each one his or her due (*constans et perpetua voluntas suum omni*

3. Dante Alighieri, *De Monarchia* II.5 (author translation); see also Pizzorni, *infra* note 5, at 24.

4. Adolfo Longhitano, *Il diritto nella realita ecclesiale*, in *IL DIRITTO NEL MISTERO DELLA CHIESA* 97 (Pontificia Universita Lateranense, 2d ed. 1988).

5. REGINALDO M. PIZZORNI, *IL DIRITTO NATURALE DALE ORIGINI A S. TOMMASO D'AQUINO: SAGGIO STORICO-CRITICO* (Natural Law from Its Origins to St. Thomas Aquinas) 5 (Pontificia universita lateranense, 1985) (Italy) (author translation).

6. Dig.1.1.1.1 (Ulpian, Libro Primo Institutionum).

quique trbuendi).⁷ Therefore, he says, the precepts of justice are: *Honeste vivere* (live honestly); *Neminem laedere ou Alterum non laedere* (do not harm or prejudice anyone); *suum quique tribuere* (give back to each one his due).⁸ As well said by Professors Salas and Rico,

the significance of the justice sector lies in its basic role as a guarantor of rights and arbiter of conflicts among citizens and between the public and the State. Central to this mediating role is the criminal justice system since it addresses the most serious individual and social conflicts. Ultimately, the state of criminal justice in any country is a key indicator of how a society protects its citizens and the community as a whole from actions which threaten their peace, safety and human rights.⁹

The opposite of justice is impunity. Impunity means total absence of punishment. In other words, impunity is the possibility of acting contrary to the law without the threat of sanction. Sanction refers to the punishment decided by the legislator. A brief consideration of the two concepts justice and impunity highlights their opposite nature and the fact that the presence of one necessarily implies the absence of the other. In this way they are essentially contradictories.

The fair distribution of justice is tantamount to a war against impunity. Impunity is in effect a sabotage of the main pillars of the State. Thus the slogan becomes: "Who loves justice fights impunity." Justice is a universal value shared by all people, nations, races, and cultures. It is a constitutive element of any authentic democracy. That is why, in 1995, His Excellency Bishop Willy Romelus and I decided to found an institution that could better help realize the great dream of Law, Justice and Peace for Haiti.

7. Dig.1.1.10 (Ulpian, Libro Primo Regularum).

8. Dig.1.1.10.1 (Ulpian, Libro Primo Regularum)

9. LUIS SALAS & JOSE M. RICO, ADMINISTRATION OF JUSTICE IN LATIN AMERICA: A PRIMER ON THE CRIMINAL JUSTICE SYSTEM 9 (Centro para la Administracion de Justicia [Center for the Administration of Justice], Fla. Int'l Univ., 1993).

III. The Teaching of Law in Haiti Through "ESCDROJ"

Jus propter Justitiam.

Law on account of Justice.

The sad and deadly period of the "coup d'Etat" from 1991-1994 reinforced the urgency of implementing our vision for a truly democratic country in the devastated and polarized Haiti. Bishop Romelus and I thus took the necessary steps to create the ESCDROJ. The ESCDROJ was created to help build a society where the rule of law can be enforced, where justice may flourish, and where peace may be enjoyed. We envisioned our law school as a place for those who want to become servants of law and justice, regardless of religion, gender, social, economic or political backgrounds.

Since its inception, the ESCDROJ has aimed to prepare and build a new generation of lawyers and jurists. These lawyers are: firstly, aware of the importance of law, the necessity of a functioning legal system, and the primacy of the individual; and secondly, willing to stay and work in Haiti despite the dire social and political conditions. Moreover, the school wants to instill in its members the strength to apply or to enforce the rule of law, the passion for justice and the constant search for peace. Thus, "*Semper aequitatem quaerere*" (*Always seek equilibrium*) was adopted as a corollary to our motto, "*Jus propter Justitiam.*"

Another impetus for ESCDROJ's establishment was the belief that without the rule of law, justice could not prevail. If law exists, then people will seek justice through the legal system instead of taking it upon themselves as individuals or falling into the ugly revenge circle. Since 1999, ESCDROJ has provided lawyers, students, and community members with an understanding of justice that was previously absent. Some graduates have become prosecutors, judges and lawyers. Others work as police officers and public officials to protect citizens' rights and to uphold the laws. Still others work through the electoral commission to ensure democracy. Most important, however, are teachers and professors who educate future generations about their rights and responsibilities as citizens under the law.

In the near future, ESCDROJ hopes to start a law clinic in order to provide both clinical training for our students and assistance to

those in our community and who need representation. Currently, after passing a pre-memoir¹⁰ at the completion of their second year, students may represent individuals before the local court. However, by having a clinic, we could more effectively train our students in a manner that combines advocacy with a strong commitment to serve those who cannot afford justice. Students would then have the necessary tools to sharpen their legal advocacy skills. The need is great because these kinds of clinical training opportunities do not currently exist in Haiti.

Secondly, people who cannot afford representation would come to the clinic because ESCDROJ has a strong reputation for commitment and a tradition of producing honest and hardworking judges, lawyers, and legal advocates. Currently, Haitians have very little trust in the judicial system because it is plagued by pervasive problems. For example, people often witness cases where the justice system has failed to hold individuals accountable for their actions or where the protection of rights depended solely on an individual's ability to pay. Through the proposed clinic, a renewed sense of trust and faith in Haiti's legal system would dispel the current doubt and disbelief that plagues the country. Relationships would be established and victims given a voice on both the national and international level. Now is the time to reach even further into the community and give voice to everyone.

IV. The Judiciary System in Haiti

Edouardo A. Gamarra,¹¹ in his studies on the Bolivian system of justice, noted the numerous and serious challenges of institutionalizing democratic procedures. These are nowhere more evident than in the system of administration and distribution of justice in Haiti. Since the transition to democracy, the judicial sector has faced many problems common to a nation emerging from years of dictatorship. Though it will not be possible to discuss all the problems of the Haitian judicial system, at least a few of them are worthy of note here.

10. A pre-memoir is similar to a small thesis. It helps the student to be better prepared to write their final thesis, "Le Memoire de sortie," at the end of his or her fourth year.

11. Eduardo A. Gamarra, *THE SYSTEM OF JUSTICE IN BOLIVIA: AN INSTITUTIONAL ANALYSIS* (Center for the Administration of Justice, Florida International University 1991), <http://caj.fiu.edu/caj/monographs/bol-mono.doc>.

First, the problems facing the administration of justice in Haiti cannot be isolated from the overall political, social and economic obstacles. The effect of the difficult economic situation in this impoverished country cannot be underestimated, particularly with regard to how justice is dispensed. However, political problems appear to be the most serious obstacle to the consolidation of a fair and equitable judicial sector. As many other countries in Latin America, the judiciary is prone to politization and assaults by other institutions. In addition, for political reasons, reforms in the justice system have been contemplated but never implemented.

Secondly, Latin American justice systems are often found to lack independence. Several factors have been identified as contributing to this: (1) a tradition of Executive supremacy; (2) political instability; (3) the civil law tradition which emphasizes a bureaucratic role for the judge in application of the laws; (4) the complexity and formalism of the system; (5) lack of political base which supports and/or to whom the system is accountable; and (6) the procedures for the selection, promotion and discipline of judges.¹²

Haiti is no exception to this trend. For example, the provision of the Haitian Constitution regarding the judicial branch is ineffective and impractical. Despite the constitutional separation of powers, which recognizes the Haitian judiciary system as an autonomous and independent branch of government, the judiciary has been subordinated to the other branches, especially the executive. In addition there has been great interference in the selection and tenure of judges. As a result, the development of an independent and professional judiciary has been extremely slow. Haiti needs to establish and implement norms and procedures for the selection, promotion, remuneration and removal of judges. Moreover, lengthy judicial terms and guarantees that judges will not be removed during their terms are fundamental to ensure judicial stability and independence. That would be a major step toward an independent and professional judiciary.

Third, the judicial system in Haiti suffers from a lack of accessibility. Accessibility refers to the right to seek redress of legal rights or settle a dispute via the courts. This principle turns on a series of factors: (1) public knowledge of the law; (2) public

12. *Id.* at 44.

confidence; (3) costs; (4) location and number of courts; and (5) corruption. In Haiti the first condition for accessibility is not met because public information about civil or criminal rights is unavailable. Given the complexity of the legal system, it is safe to assume that popular knowledge of legal rights is limited. The scarcity of free legal services for lower income groups contributes greatly to the lack of legal knowledge. While the right to counsel is afforded to all citizens, court appointed counsel is generally only provided after the pretrial investigation is completed. In short, defendants are denied the right to legal advice during the most critical period of the proceedings.

Another factor that affects accessibility is the confidence the public has in the judicial system; citizens seldom avail themselves of a system they distrust. Trust is the product of the perceived impartiality of the system and the equality with which it treats users. Regrettably, in Haiti the administration of justice favors those who can afford the system and discriminates against those who are least able to pay. This unfairness is aggravated by the inefficiency of the system ranging from high caseloads per judge to excessive processing delays. Finally, the existence of corruption among judicial personnel greatly undermines citizens' expectation of being treated fairly. In sum, Haiti's judicial system suffers from a lack of accessibility, which in turn undermines its efficacy and credibility.

V. Conclusion

MUNIR AKRAM (*Pakistan*) said that the need for justice and the rule of law was self-evident, particularly in conflict societies. Each conflict situation was unique and had its own dynamics. He had agreed with the Secretary-General that pre-packaged solutions were ill-advised, and one-size-fits-all formulas must be eschewed. Justice and the rule of law should be integrated into all international or United Nations involvement in post-conflict societies. He recognized the importance of building national capacities and independent national institutions, and he supported the promotion of good governance and national judicial capacity-building.¹³

Therefore, my dear friends, the enforcement of the rule of law and the administration of a fair justice for all are in jeopardy. Recall the Latin maxim: *Boni bonum, publicum currant* (*May the good men take*

13. S.C. Res. 8209, U.N. Doc. SC/8209 (June 5, 1982).

care of the public good). I hope that this address allowed you to better understand how the establishment of the rule of law and justice and eradication of impunity's empire in Haiti is not a small task. More than a battle it is certainly a real war. First and foremost we call upon all the citizens of Haiti but welcome and greatly appreciate the sincere and precious help and collaboration the lovers of law, justice and peace from the international community have brought to our common cause.

Mes chers amis, je vous remercie!