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Reflections on Ethical Integrity: Challenges to the Rule of Law Facing the Haitian Legal Profession

BY DR. JOMANAS EUSTACHE*

Ethical integrity challenges to the rule of law are an essential matter with which almost all countries have been confronted, or which they are currently facing. Here we analyze how best we can contribute collectively in addressing such issues in the legal profession to prevent other countries from having to face these challenges in the future.

I. Defining Terminology and Legal Constraints

To engage effectively in this analysis, I first note that there are essentially three relevant sources of official Haitian law that address the role of ethics in the legal profession in Haiti: the Decree of March 29, 1979, the “Arrete” (statute) of April 2, 2013,¹ and the law of May 7, 2014.² These sources of legal authority include definitions of key terms relevant to the role of the lawyer in Haiti.

*Dr. Jomanas Eustache, Dean, L'École Supérieure Catholique de Droit de Jérémie, (the Catholic Law School of Jérémie), Haiti. First and foremost, may I be allowed to kindly congratulate my dear friends and colleagues at the Hastings to Haiti Partnership (HHP) and particularly Professor Kate Bloch for inviting me to participate in this symposium and to also share my modest thoughts on a very important and interesting theme for both the good health and survival of today's society and particularly a third world or underdeveloped country as Haiti.

1. Cf. *Moniteur*, No. 63, April 11, 2013. (An Arrete has less force than a decree and comes after a decree in the hierarchy of norms in Haiti's sources of law. In the terms of the Article 1 of this Statute: This present “Arrete” defines the rule of moral conduct (deontology) applicable to the agents of the public administration. Article 3: The Haitian public servant is obliged to strictly observe the ethics norms of the public administration).

2. Cf. *Moniteur*, No. 87, May 9, 2014.

A. The Lawyer

According to the first article of the Decree of March 29, 1979,³ in Haiti the title of "Lawyer" is conferred upon someone holding a bachelor's degree in law, who has taken the official oath, been registered in a bar association of the country (or is on the list of that association), and who is in the process of completing his or her period of training or apprenticeship.

Among the requirements to obtain the title of lawyer and practice as such, Article 7 requires that "The president of the bar association or delegate member of the board collect[] all information about the candidate" who, according to Article 8 of the same decree, takes the following oath: "I swear to observe, in the exercise of my profession, the principles of honour and dignity which must characterize the members of the Order of Lawyers."

In Article 2, the same decree states, "The profession of lawyer is liberal and independent." This implies that the legal profession is to be in the service of the public and under jurisdictional controls. However, this depends more on the conscience of the lawyer than on the judicial power. When in court, the lawyer has an obligation to participate in the exercise of judicial power. The lawyer also has responsibilities to the court, including the service of judicial assistance and appointments by the court. One example of these duties is the lawyer's obligation to take on the responsibility of certain cases free of charge.⁴

B. Professional Ethics and Professional Morals

According to Article 4 of the statute, defining the ethical rules applicable to public service, "professional ethics appeal to values that assume the culture of honor, the sense of discipline, the personal commitment in the service for the common good."⁵ Article 5 of the

3. This decree represents one of the best initiatives undertaken by Haitian legislation in its efforts to put in place an organizational structure to regulate and facilitate the legal profession in the country. It is considered to be the most important legal instrument for the bar associations and contents norms to help in keeping the honor and dignity of the legal profession by encouraging its members to follow the rules of ethics and deontology in their daily professional activities.

4. See JACQUES HAMELIN AND ANDRE DAMIEN, *LES REGLES DE LA PROFESSION D'AVOCAT*, 5TH EDITION, DALLOZ X (1987).

5. Art. 9: With respect to the terms of this present statute, the public servant who does

same statute states, “the professional ethics of the public functionary is primarily in the accomplishment of the tasks entrusted to him in the service of the public.” Furthermore, integrity or probity is the virtue consisting of observing scrupulously the duties imposed by honesty and justice.⁶

C. The Public Servant

The law of May 7, 2014, also offers a definition of “public servant.” According to Article 4 of the law of May 7, 2014, the public servant is any public agent appointed to a permanent job on a full time basis in the public sector and in any administrative branch to which he or she belongs. According to the first preamble of the Statute of April 7, 2013, on the one hand, the public servant must fulfill some obligations set up by the Decree of May 17, 2005, on the revision of the General Statute of the Public Function. On the other hand, the public servant must engage in behavior that is in compliance with professional ethics, either in the practice of his or her duties or in private life. With respect to Article 7 of the cited Statute, from the start of his or her entry into the public administration, the public servant takes an oath on his or her honor, to assume his or her mission in the strict respect of the law and of the present code of moral conduct (deontology).⁷

D. Corruption

In addition to the definitions of lawyers, professional ethics, morals, and public servants, the definition of corruption is an essential element for our focus on the professional ethical integrity of attorneys in Haiti. Article 3 of the law of May 7, 2014, defines

not follow the rules of professional ethics commits a violation or derogation. Therefore, he/she is liable or subject to civil or penal sanctions, independently of disciplinary sanctions established by the Decree of May 17, 2005 on the revision of the General statute of Public Service; Art. 10: The public servant must be faithful to the institutions of the Republic. He/she is honest and impartial (unbiased) and acts with dignity in any circumstance; Art. 11: The public servant adopts an honest, discreet, impartial and rigorous behavior in the practice of his duties; Art.11.1: He/she acts with fairness, rectitude, and honesty in virtue of the duties imposed by the administration of justice and the rules of the public administration.

6. See Art 10, 11 of the cited statutes.

7. See also Art. 18 of that statute on the dedication (devotion), dignity, honesty and integrity that must characterize the public servant in his/her duties.

corruption as any abuse or any use made for himself or for another person to the detriment of the state or other institutions. According to its third preamble, this law aims to create a sense of responsibility, transparency, probity, and ethics as principles of management for all sectors of national life. Obviously, corruption is currently a significant problem in Haiti.

That being said, let us consider some of the possible factors of which a deficit or total absence leads necessarily to a lack of ethics in the legal profession.

II. Possible Causes of Lawyers' Lack of Ethics and Integrity

A. Absence of a Course on Deontology⁸ in Most Curricula of Law Schools Around the Country

As our colleagues Kate E. Bloch and Roxane E. Dimanche noted in their study on the rule of law and ethical integrity in Haiti, legal ethics does not occupy a privileged position in the curricula of law schools in Haiti. They state that “[e]ducating lawyers and aspiring lawyers about a new legal ethics code involves choosing an option that meets the goal of signaling the importance of ethical practice and assisting those involved in the justice system to succeed in their admission to the bar and to engage in ethical practice.”⁹

Based upon our experience of over two decades in the legal field, we find it unfortunate that most of the law schools in Haiti do not allow a place in their curricula for a class on deontology. As a result, the students miss the opportunity to discuss, with their professors, issues of moral conduct in the practice of law. Therefore, it is no surprise students believe that anything not forbidden by the law is permitted.¹⁰ They then enter their law practice without the requisite moral understanding and appropriate ethical behavior.

8. See HAMELIN & DAMIEN, *supra* note 4, at 1.

9. See Kate E. Bloch & Roxane Edmond-Dimanche, *The Rule of Law and Ethical Integrity: Does Haiti Need a Code of Legal Ethics?*, 37 U. HAWAII’I L. REV. 1, 30 (2015).

10. As our late colleague and former Professor Mercier Josma used to tell us in his courses on Civil Law and Civil Procedure: “The profession of lawyer must lead first to honour and not necessarily to wealth.”

B. Ineffectiveness of Most of the Bar Associations in Haiti or Their Lack of Control Over Their Members

It is well known now that a bar association plays a very important role in ensuring that lawyers follow certain rules and behavior in their daily profession. The bar association is a professional organization established by law to regulate the practice of law and the legal profession. It not only ensures the honor and dignity of the profession, but also guarantees the protection of the public by adopting a deontological code for its members. Presently, the profession is regulated by the Decree of March 29, 1979,¹¹ which, in reality, is an administrative instrument and not a deontological code.

Through deeper and broader analysis, we will come to the conclusion that the ineffectiveness of Haiti's bar associations is a logical result of the weakness of the State, which leads often to a poor and even nonexistent application of the law.

C. Absence or Deficit of the Rule of Law

It is self-evident that reinforcement of the rule of law is necessary in Haiti since, as a nation, it should still be considered politically unstable, socially fractured, and economically divided between a minority of rich and a vast majority of poor people. Therefore, both national and international communities should show a special interest in building structures or institutions that could help strengthen the Haitian legal and judicial system. We urge anyone interested in the legal field to join in the important task of implementing the rule of law in Haiti by helping legal professionals adopt appropriate behaviors.

D. Lack of Ethics and Integrity of Most Legal Professionals

Unfortunately, the malfunction of the judiciary system in Haiti facilitates inappropriate practices and misconduct. Thus, it is no surprise that many judges, prosecutors, lawyers and clerks of the courts are often accused of wrongdoing or corruption. As I stated in a

11. *Le Barreau [The Bar]*, *Le Juriste Haitien [The Haitian Lawyer]*, <http://juristehaitien.chez.com/tables/barreau/barreau.html> (last visited Jan. 31, 2015).

previous article:

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.¹²

As one can understand, consequences will necessarily flow from the causes mentioned above.

III. Consequences of Lawyers' Lack of Ethics and Integrity

As one can anticipate, the lack of ethics and integrity in most lawyers' dealings with clients taints and perniciously affects their perception throughout the community.

A. Bad Reputation of the Legal Profession

In Haiti, people do not like to deal with lawyers. Thus, a lawyer must make great sacrifices and efforts before even hoping to clear his name of the stigma attached to it: "Avoka se Vole"¹³ (Lawyer is thief). We certainly understand the pain and frustration of those in the legal field who try hard to live according to the rules of their profession. However, they also know their general perception is unfavorable.

I believe it is in the best interest of a democratic society to make sure that its members can enjoy a good reputation (and protect it) as long as they are worthy of it. Democracies have always recognized and revered the fundamental importance of the individual. This importance must, in turn, be based on a good reputation.

12. See Dr. Jomanas Eustache, *The Importance of Teaching Law and the Reinforcement of the Judiciary System in Haiti*, 32 HASTINGS INT'L & COMP. L. REV. 609 (2009).

13. In Haitian creole.

B. Client Mistrust in the Judicial System

As I discussed above, the Haitian administration of justice regrettably favors those who can afford the system and discriminates against those who are least able to pay, a situation that leads, much of the time, to a parody of justice. Therefore, Haitians have very little trust in the judicial system because it is plagued by pervasive problems due to corruption, which is systemic in the country. Specifically, the lack of probity in lawyers' practice is one of the biggest handicaps to the successful functionality of the judicial system in which lawyers should be part of the solution, not the problem.

Paradoxically, lawyers, whose mission should always be to search for justice and truth, are perceived instead as doing just the opposite. Not only does the citizenry not expect it, the legal profession in Haiti rarely carries out these goals. As a result, there will not be a fair application of the law and we will not see justice for all realized in the near future.

C. Perpetuation of the Absence of the Rule of Law

It is necessary to implement steps to ensure the rule of law in Haiti, and at the same time, assist those who help judges make fair and just decisions. One way to accomplish this goal is to have lawyers adopt certain rules and enforce behavior capable of preserving their profession's ethical integrity.

However, I anticipate that the fight for a State where the rule of law prevails and corruption ends will be a very long one, or perhaps endless, if it is not conducted at all levels or sectors of the justice system. That fight must be a full-scale attack on all factors that generate or facilitate corruption in the system. Otherwise, the citizens will be so frustrated and disappointed that they may try to implement justice themselves by any means they deem appropriate.

In a country whose history is highly marked by discrimination, exclusion, and the denial of basic human rights during the time of slavery, if those who seek justice through the legal channels feel systematically betrayed, they may tend – and I want to emphasize this risk – to choose other nonlegal options. A revanchist attitude may open the ugly and dangerous circle of endless violence in the country and contribute to the deterioration of the social and economic fabric.

Thus, it is in the best interest of the Haitian society, like any

other society, to see that justice be equally delivered to all citizens, just as one of the well-known precepts of law, Justinian, says, “*Suum cuique tribuere*”¹⁴ and the book of Proverbs suggests, “Justice elevates a nation.”¹⁵

D. Aggravation of the State of Poverty

It is well known that Haiti is the poorest country in the Western Hemisphere. However, very few believe there is a link between the corruption in the judicial system and the high level of poverty. After a long and profound reflection on the situation of Haiti's poverty, I come to the conclusion that one of the causes perhaps resides in the lack of ethics and professionalism with which most lawyers handle their clients' cases. That is to say, those clients whose interests lawyers theoretically have the moral obligation to defend.

I believe several factors contribute to the state of poverty in Haiti, however, some factors are less evident than others. In such a poor country, where daily flagrant violations of basic human rights are the rule, if lawyers, who are considered to be pillars of the judicial system, find it acceptable to ignore or neglect the principles of elementary moral ethics, it will be no surprise that the country's economic situation worsens. Those who cannot pay for the service of lawyers will not be fairly defended, and lawyers will always have the temptation to defend only those clients who can pay more.

As a way to cope with this terrible situation, I strongly encourage that appropriate actions be taken.

IV. Some Remedies

Among the possible remedies aimed at improving the health of the judicial system as a whole, and the legal profession in particular, I suggest the appropriate authority make the following changes.

14. See Justinian (inst. 1, 1, 3-4). This phrase means, “Give to each one his or her due.”

15. See the Book of Proverbs 14, 34.

A. Make a Course on Ethics and Deontology Mandatory

In all law schools' curricula, a class on the ethics and deontology of the legal profession should be required. Therefore, all agents of public service working in the legal and judiciary field would have to prove they have completed this course. Moreover, a higher score should be necessary to pass that class than that required for other courses. To get admitted to the bar association, an oral exam or interview before a jury that puts an emphasis on moral conduct should be required.

B. Establishment of a Code of Ethics Specific for Legal Professionals Besides the Statute of April 7, 2013, on Moral Conduct of Public Agents

It is indeed unfortunate that we do not yet have an official code in Haiti, which would help guide legal professionals through their duties.¹⁶ It is then desirable that a code of ethics be published in order to regulate the conduct of all legal professionals, since they should all be bound by the moral obligation to work for a fair distribution of justice and the establishment of the rule of law.¹⁷ This code would create a special role for bar associations throughout the country.

C. Reinforce the Role and Capacity of the Bar Associations in the Entire Country and Specifically the Disciplinary Bodies or Committees

In its Article 2, the Decree of March 29, 1979, has determined the structure in which the legal profession must be practiced. It must be in a cooperative organization called "Ordre du Barreau" (Bar

16. According to J. Hamelin and A. Damien, the Establishments of Saint-Louis brought the first set of ethics rules for lawyers declaring that they refrain from presenting at trial a dishonest cause but, on the contrary, to fight courteously against the adverse party; that they must accept with no charge the lawsuits from the destitute, widows and orphans and abstain from making any deal with the client for whom they plead during the duration of the trial. See J. HAMELIN and A. DAMIEN, *op.cit.* p.27

17. I urge Professor K. BLOCH to publish her essay co-written with R. DIMANCHE as soon as possible. See Hamelin & Damien, *supra* note 4.

association), which includes a right of supervision and discipline.¹⁸ The next article states that it is mandatory for all lawyers to be registered in a bar association.

In order to better understand the importance of such an essential organization, I think it is useful and necessary to examine its mission and activities.

As a guardian of professional morals, the bar association has a mission to ensure that the rights and liberty of the advocates, and those of the clients, are respected and guaranteed. In other words, the bar must do whatever is necessary to provide an environment where the public service of justice is secured and to see to the good functioning of the justice system. Consequently, the bar association conducts activities both on an administrative and disciplinary level. In the latter, the activities are essentially disciplinary. They ensure that morality is present in the daily practice of the legal profession, and they provide the procedure for clients or public authorities to file complaints against lawyers.¹⁹

The bar association is instituted to help the lawyer accomplish his mission to defend and protect the interests of all citizens. It will be of paramount importance that the bar associations either singularly or jointly organize periodic instruction on deontology for their members. In an effort to provide transparency, the president of the bar association should also try his or her best to put in place a service that could inform the public about the role and mission of the association. Additionally, the bar association should help those who have a claim against a legal professional and feel at ease when they bring a claim to the disciplinary committee.

The Decree of March 29, 1979, states that each bar association must have its own internal rules. However, for a comparative study, it is difficult if not impossible for a researcher to find such rules

18. This article poses the fundamental principle of auto-supervision. When necessary, lawyers will be monitored and even regulated by their peers. Here, I draw some inspirational thoughts from H. Patrick Glenn's interesting article, "Independence et deontologie judiciaires" (1995): the system of disciplinary auto-supervision is necessarily transparent. The transparency is proof of the integrity of the system, or its lack of integrity. Disciplinary investigations must then, as a rule, be public. Likewise, the board of discipline must account for their activities. *Cf.* La Revue du Barreau, Tome 55/No.2/Juin-Juillet 1995 (310). According to Art. 62 of the decree, all violations of the professional rules and regulations of the Order, all breaches of probity and honour and consideration subjects the lawyer to disciplinary sanctions.

19. See HAMELIN & DAMIEN, *supra* note 4, at 51, 52, 93.

because they do not exist yet. Consequently, the presidents of these associations must do something to make the rules broadly available.

V. Some Resolutions

With corruption so pervasive in Haiti's justice system, some steps must be taken in an effort to improve the situation. As I explained above, one possible and effective way to solve this endemic problem in the Haitian legal and judicial system is to tackle the issue from all possible angles. To make a lasting and substantial improvement in the system, which could be applied at several points simultaneously, I recommend the following.

First, I strongly recommend that it be made mandatory for all law schools to have a class on ethics and deontology in their curricula. Second, the bar associations in all jurisdictions must play their role as disciplinary bodies and see that their members apply the principles of moral conduct when those members deal with clients. If their conduct does not comport with the code, then the bar associations must bring any action that puts the justice system into jeopardy to the attention of the relevant authority. Third, it is of primary importance that the civic society shows it is committed to change and they value the proper functioning of the judicial system. Finally, I advocate for greater involvement of mass media in the system by educating the general public through special radio and TV broadcasts or journal articles and by providing training to more journalists in legal and judiciary issues to increase accountability. Clearly, the public should always be aware of current issues and understand the need to change the situation for the welfare of the entire society.

VI. Conclusion

It is almost undeniable that the practice of law in Haiti is rife with problems of corruption. The legal system undoubtedly suffers from a lack of integrity. Reports from human rights organizations and NGOs mention these problems and urge rigorous controls, disciplinary norms, and more positive action in order safeguard the legal profession and the future of Haiti.

Women and men working in the public and private sectors need to join efforts to reverse the corruption. Only they facilitate rule of law, justice, and a better way of life for the people of Haiti.
