

# Judges, their Associations, and Politics

## Notes of a Research Agenda

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### **Abstract**

The last decades have been marked by an increasingly significant presence of the judiciary, its institutions and procedures in the Brazilian republican life. Magistrates, particularly, have come to play increasingly prominent roles in society, being summoned to act on various fields by a citizenry that began to identify their intervention as crucial for expanding citizens' rights. Despite an increasing number of studies on judges over the past few years, little attention has been devoted to understanding their associative life and the way judges engage in their different corporations. Focusing, particularly, on the Association of Brazilian Magistrates (AMB), the Association of Federal Judges of Brazil (Ajufe) and the National Association of Labor Court Judges (Anamatra), this article aims to analyze aspects of the associative life of magistrates, investigating both some aspects of their internal dynamics and elements related to the entry of such corporations into the Brazilian political scene.

**Keywords:** Judiciary. Magistrates. Associations. Democracy.

In his essay *From Independence to Republic* – a text frequently referenced in essays devoted to Brazilian studies – Euclides da Cunha described the political formation of Brazil as a unique case of nationality made up by a political theory. Such theory was that of constitutional lawmakers of 1823, the work of a learned minority, conceived to “elevate to the constitutional regime, which was new even in Europe, and bring together a scattered people that did not live through any of its preparatory stages” (Cunha, 1999, p. 154). Legislating to a society that had just got freed from colonial rule, far from the lights of civilization “could be anything but complying with the lucid surrounding opinions” (idem, p. 152). The founders of the new State, Cunha says, having no national traditions to rely on, amidst the darkness of their surroundings, found themselves compelled to rule by decree, “in the style of tyrannical decisions”, captured by the mirage of the future they intended to bring to reality (idem, p. 154).

By means of an abridged formula, Cunha ingeniously disclosed the secret force that propelled the formation of the new State and became its original mark, not differently from Tocqueville in *Democracy in America*, who identified in the attachment to the principle of equality the mark that characterized the process of construction of the society he studied. Here, unlike America that is rooted in self-government, the nation should emerge from a modeling process to be carried out over time by its statesmen based on constitutional law texts.

Thus, we were born under the sign of the asymmetry between the State and society, rationally justified by its civilizing purposes and by its association with the principles and institutions of political liberalism. In this context, the statute of citizenship “amidst the darkness of the surroundings” should remain strict. It should expand over time, as the values of civility and self-government would become embedded in the multitude, through the pedagogical enterprise of the elites. Civilization would be a permanent work of elites, anchored to Law and its institutions, which together would defeat the barbarism of the backlands, subdue the

clannish potentates of the hinterland, and interdict the contamination of the politics by the widespread *caudillismo* of the neighboring countries.

With such agenda of social and political control, the imperial order, on behalf of its ideals of civilization and preservation of the territorial unity, was led to translate the political controversies into law matters, particularly administrative law, such as those that opposed centralizing and federalist forces in regard to the reform of the Code of Criminal Procedure in the first decades of the new state (Coser, 2008). Not surprisingly, the work that best defends the imperial order consolidation policy is the 1862 *Essay on Administrative Law* by the Viscount of Uruguay, in which he presents the reasons behind his actions as a statesman in defense of governmental centralization. His argument is sociological in nature: the transference of the administrative power to local authorities and provinces – in the absence of civic culture and social solidarity – would result in a channel open to despotism and barbarism.

The normative ideal of the imperial State of creating a nation guided by the lights of civilization required its body (large-headed, but with short arms, as described by the Viscount) to reach remote locations in order to spread its pedagogy. José Murilo de Carvalho, in his classic *A Construção da Ordem* (The Construction of Order), explained the process in which that body, by means of the acts of an elite made up of judges of its choice and formed according to its principles, managed to get closer to the hinterland which it intended to submit to its law, values and procedures (Carvalho, 1996). During the long decades of the imperial period, the original mark of our formation was thereby reproduced by intellectuals experienced in its imposition.

The republic that emerged from both the struggles for decentralization and the endorsement of the dimension of interests brought with it a new set of actors. Entrepreneurs, workers, the military, and self-employed professionals expand the group of participants in the public sphere and renew the range of dominant themes in the economy and politics, including the industrialization and those related to the

country's modernization. With regard to these latter, Ruy Barbosa's administration as Finance Minister, at the beginning of the Republic, in 1891, was exemplary.

The emergence of the social question, with the struggles of trade unionism for social rights, including the acknowledgement of the right to collective contracts in employment relationships, affected the statute of existing liberalism – individualist in nature – forcing its expansion and the creation of protective labor laws (Werneck Vianna, 1976). Thereupon the private sphere experiences, by means of law, the regulation by the public sphere, with the labor market being placed, although incipiently, under the jurisdiction of law. The critique of the prevailing liberal orthodoxy by the movement of the ideas intervenes in this scenario defending a central role for the State in the conduction of the economy and in maintaining the social order, as in the influent essays by Alberto Torres and Oliveira Vianna, the latter being an admirer of the Viscount of Uruguay's works.

As in the first decades of the Empire, publicists and statesmen focus their perspectives on the future, now aiming at the modernization and industrialization of the country. In the diagnosis that prevailed in the Revolution of 1930 those objectives could not be reached by “natural means”. They should arise from an action arranged by the State through institutions able to establish links of solidarity between it and the society, especially with entrepreneurs and labor unions. In the light of such ideas, the corporate formula soon covers the world of work, bringing along the jurisdiction of Judiciary over the [labor] market, as enshrined in the 1943 Consolidated Labor Law (CLT).

As stated by Raymundo Faoro, in a renowned analysis, there is a red thread linking the Vargas Era to the Empire, which is evident, among other aspects, in the common perspective (very clear in both periods) that before a scenario of fragmentation and social unsolidarity such as ours, the elites should play a pedagogical role in the formation of citizenship. Not coincidentally, Oliveira Vianna, committed to such

diagnosis, will be one of the main architects of the CLT and the author of its recitals. In the 1930s, such role would focus both on creating conditions for harmony between capital and labor, and on the formation of a labor force guided by the discipline of the manufacturing world. Under such concept, the Labor Courts would become players in a process of modernization in progress, as they then operate on the front lines of the social control of the labor force.

In addition to that, beginning with the electoral legislation of 1932, the judges were also mobilized to act in the political market. Thus, the jurisdiction over the electoral proceedings was entrusted to them, in order to prevent the voting control by state oligarchies in the *coronelismo* system. Thus, if previously judges played relevant roles in the construction of the imperial order, their participation in the modernization process under the Vargas regime was no less comprehensive. After the CLT, they managed not only the creation of a domestically unified labor market, but also interest disputes in the labor world. By means of their intervention, the market disputes – emerged from unionism – are transformed into legal disputes, and as such, they are solved in court. The “top-down” process of modernization induced by the State finds legitimating support in the world of Law and its characters.

Such modeling, sometimes softened – as between 1946-1964 –, sometimes intensified in its recessive features – such as during the military regime –, was present in the decades of conservative modernization that transformed the country, being only interrupted by the democratization in 1985, which was institutionalized under the Constitution of 1988. After the Constitution entered into force, new forms of access to the public sphere were made available for the society, especially in the Judiciary, both for advocacy of rights and the acquisition of new ones under the mediation of new mechanisms, like the actions for control of constitutionality of laws, the direct actions for the declaration of unconstitutionality by omission, the writs of injunction, and the public-interest civil actions. In addition to these resources, the Prosecution

Office was then given a new constitutional role, aimed at the defense of the order system created by the Constitution of 1988 (Werneck Vianna, 2008).

If, on the one hand, this considerable change cleansed our institutions from recessive and authoritarian traits, on the other hand it preserved – and even amplified – the Judiciary presence in our political and social life, leading not only to an exponential growth in litigation but also to the phenomenon known as “judicialization of politics”. Judges, in particular, begun to play new roles in social life, and were increasingly required to decide on various issues by a society that now believed their intervention was a fundamental way for the expansion of its rights (Werneck Vianna, 2013). Guided by the Constitution of 1988 and working based on specific codes of ethics and conduct, these agents have frequently even taken the place of trade associations and political parties in core issues affecting processes of political and social democratization of the country.

It is worth mentioning that the presence of judges in the public life, in the context of the affirmation of the democratic constitutionalism, is a universal process extensively dealt with in literature (Cappelletti, 1993; Häberle, 1997; Garapon, 1998). Concerning research carried out in Brazil specifically, even if important works have been made that helped to profile judges (Werneck Vianna et al., 1997; Nalini, 1994; Arantes, 1997; Sadek et al., 2006) – with remarkable efforts put in by the National Council of Justice to describe the demography of Brazilian judges (Brasil, 2014) –, other essential aspects, which may broaden the understanding of these characters, are still to be discovered by research agendas. An example of that is the associational life of judges and their way of joining their various alliances, especially the Association of Brazilian Judges (AMB), the Association of Federal Judges of Brazil (Ajufe), and the National Association of Labor Court Judges (Anamatra), as well as the participation of these societies in the public and political life of the country.

In spite of these associations having had exponential growth in number of members over the past few years, and having significantly expanded their presence in the public sphere, they have not been object of more detailed studies by the professional literature yet. Understanding more clearly aspects related to the associational life of such societies proves to be important, and requires new research projects both about their internal dynamics (in order to analyze the activities they organize to strengthen their organizational identities) and their external dynamics, with the aim of investigating how they insert themselves into the Brazilian public scenario.

According to data published by the *Censo do Poder Judiciário*, in 2013, about 90% of the Brazilian judges are linked to at least one association, which shows the influence of these organizations among these professionals<sup>1</sup>. Generally speaking, it is possible to say that associations of judges – such as AMB, Ajufe or Anamatra – are like spaces for intellectual animation and the strengthening of professional practices and ideologies, which provides a meaningful basis for insertion into the corporate life of judges in connection to them. Even if they are not young (AMB, Ajufe, and Anamatra were founded in 1949, 1972, and 1976 respectively), these three associations of judges have had considerable growth over recent years, and such expansion takes place largely in the aforementioned increasing process of strengthening of the Judiciary, their institutions, stakeholders, and procedures in the social and political life of the country.

An internal analysis of these associations enables the understanding of how they have tried to take measures along with their affiliates in the promotion of activities aimed at the establishment of their respective professional identities and cultures. Ajufe and Anamatra, for instance, publish periodic newsletters communicating the activities of their

<sup>1</sup> The State Military Courts, the Labor Courts, and the Federal Courts are the branches of the Judiciary that have the highest proportion of members affiliated to associations, accounting for 97.3%, 92%, and 90.7% respectively (Brasil, 2014, p. 58).

boards. Additionally, they edit two publications each, namely *Revista de Cultura* and *Revista Direito Federal*, and *Revista Anamatra* and *Revista Trabalhista*. These publications generally offer articles dealing, from different perspectives, with theoretical and practical issues related to the professional activities of labor and federal judges. Besides these publications, it is worth highlighting the efforts made by these entities in the organization of sporting events involving hundreds of people, which aim at creating fraternal bonds among their affiliates, like the “National Games of the Bench” and the “Football National Championship”, organized by AMB, and the “National Games”, promoted by Anamatra.

Over the last few years, these entities have significantly intensified the creation of training spaces for their members, by organizing seminars, meetings, symposia, and legal courses. The most significant case of the efforts to produce certain homogeneity in relation to their guidance system was the creation, under the auspices of AMB, of the National School of Judges (ENM), which currently brings together 97 schools of judges scattered throughout the country, with eight of them being federal, 30 state-based, 31 labor law-based, and 28 election law-based. Working in partnership with courts and other institutions of the Judiciary, ENM offers courses on various subjects for their affiliates to improve their professional skills. Judging by the amount of courses offered, by the wide range of subjects addressed, and by the number of instructors and students involved, it is possible to see the increasing expansion of these training spaces, be it due to the wish of judges to improve their legal culture to perform their professional tasks more efficiently or due to the interest of these judges in acquiring, by means of such courses, substantial academic background that may aid their careers in the future.

Another noteworthy aspect in the internal dynamics of these associations concerns the periodic congress meetings gathering hundreds of professionals, like the National Congress of Labor Court Judges (CONAMAT), promoted by Anamatra. The main topics of such



congresses relate, in general, to the role of judges in democracy and their presence in social change processes. The forthcoming “Brazilian Congress of Judges” that is being organized by AMB, is an example of such agenda, as it will be dedicated to “The Judiciary Power and the Consolidation of Democracy: the Role of Justice in Contemporary Society”. Made up of lectures, round-table talks, workshops, panels, and presentation commissions, the congress addresses various topics, such as the presence of courts in contemporary societies, the formation of the Brazilian Judiciary and the challenges of democracy, the role played by Law in social change processes, views on the new Code of Civil Procedure, the democratization of the legal system, class actions and excessive litigation in the Brazilian Judiciary. In its national congress, AMB also promotes a contest of papers addressing subjects related to the theme of the ongoing congress. Winning papers are published and added to the already diversified Brazilian legal book publishing market.

In addition to congresses aimed at reflecting on the role of judges in contemporary society, there are also various awards promoted by these associations that intend to encourage virtuous practices by law professionals and those somehow related to the Judiciary, like the “AMB Journalism Award” and the “Anamatra Human Rights Award”, which reward, respectively, the best journalistic works about judges and the Judiciary, and individuals or companies that have stood out in their promotion and defense of human rights. It is also important to mention the “Innovare Award” promoted by AMB and Ajufe, which has earned increasing acknowledgement by the public opinion, and aims at rewarding innovative practices in the scope of the Judiciary, including those by judges, public defenders, attorneys, and members of the State and Federal Prosecution Office.

Concerning the external dynamics of these associations, it is important to mention that, especially in recent years, boosted by the increasing presence of the Judiciary in the social and political life of the country, entities like AMB, Ajufe, and Anamatra have tried to expand

their participation in the public sphere, principally with regard to constitutionality control of laws and monitoring of legislative and public policy bills. Such way of involvement in public life – enabled by either intrinsic changes in legal careers and in the judicial field, or changes in the Brazilian public sphere and political life – although being novel, has guaranteed legitimacy since in Brazilian society it is traditionally supported by the strong public presence, over the years, of associations of the Judiciary in the political life of the country. A clear example of this has been the actions, at various crucial moments in Brazil’s history, of the Brazilian Bar Association (OAB) (Werneck Vianna & Werneck Vianna, 1984; Bastos, 2009).

Thus, anchored, on one hand, to the tradition of the strong presence of judges in the public life of the country, and, on the other hand, to the important role played by the Judiciary in the Brazilian contemporary life, these associations have been seeking to engage more actively in public life, be it by participating in forums organized by the Judiciary itself<sup>2</sup>, or by establishing channels for communicating with the “general public”<sup>3</sup>. Activities such as the “Expedition of Citizenship”, organized by Ajufe in partnership with several entities (and which aims at providing free access to justice, healthcare, and citizenship services to hard-to-reach locations, serving coastal communities and indigenous villages), are also examples of how these associations try to “cross the borders” of their institutions by taking part more actively in the public life of the country.

It is worth noting the different means through which these associations enter the public sphere. Position papers on certain agendas of public debate<sup>4</sup> and the production of public manifestos in regard

<sup>2</sup> As, for instance, the “National Meeting of the Judiciary”, organized once a year by the National Council of Justice [CNJ] to set the priorities for action of the Brazilian courts.

<sup>3</sup> For example, the television show *Justiça para Todos* (“Justice for All”), sponsored by Ajufe and broadcast by “TV Justiça”, which, as an electronic magazine, with news reports and interviews, aims at disseminating the activities of the Federal Justice in different regions of the country.

<sup>4</sup> For instance, AMB’s critique of the Constitutional Amendment Bill No. 171/93 that proposes reducing juvenile age from 18 to 16 years.

to certain themes<sup>5</sup> have been strategies used by these associations to lobby the Legislative and the Judiciary towards their agendas. Another strategy has been the organization of public campaigns, such as the one organized by AMB, called “Direct Elections in Brazilian Courts Now”, which pressed for changes in the rules of procedure of Courts aiming to allow judges to elect directly their respective presidents and vice presidents. These campaigns can be broader and involve other civil society stakeholders, as is the case with the participation of AMB in the “Coalition for Political Reform” along with other entities as the National Conference of Bishops of Brazil (CNBB) and OAB, aiming to press the Federal Supreme Court (STF) to approve the Direct Action for the Declaration of Unconstitutionality (ADI) filed by OAB, which deals with the funding of electoral campaigns.

Even more noteworthy are the direct attempts of these associations to influence the Legislative and the Judiciary, so that projects linked to their interests receive special attention. Ajufe and Anamatra publish every year an *Agenda Político-Institucional*, a document establishing the main topics and the most relevant legislative, administrative, and judicial demands to be considered in the activities of these entities in relation to the Three Powers. In the last documents released by each one of these two associations, one may find a mapping of bills pending in the Legislative, in which these entities are interested. Information includes the progress of debates, the name of the author and political party that proposed the bill, and is followed by the political stance of the respective association on the issues in question. In addition to that, cases in progress in the Judiciary – especially at the Federal Supreme Court, the Superior Court of Justice, and the Federal Justice – concerning these associations are also highlighted. Whereas the *Agenda Político-Institucional* issued by Ajufe is mainly concerned with the defense of matters regarding

<sup>5</sup> One of these was the manifesto signed by AMB, Ajufe and Anamatra on the filing for injunction against Resolution No. 184/2013 of the National Council of Justice, which dealt with the criteria for the creation of jobs, positions, and legal units in the context of the Judiciary.

federal judicature, in the case of Anamatra the paper focuses on the legislative and juridical productions regarding Labor Justice, especially draft bills and litigations related to social legislation, labor judicature, Labor Justice, and also on the internal democratization of the Judiciary.

The public activities of these associations often occur by means of a coalition between them either for issuing joint manifestos, as mentioned above, or for mobilizing various entities towards certain agendas. This is the case of the Associative Front of Judges and the Federal Prosecution Office (FRENTAS), which brings together eight associations – including Ajufe and Anamatra – with the aim of unifying the demands and the positions of different entities in regard to issues involving the Legislative and the Judiciary. The joint activity of AMB, Ajufe, and Anamatra is becoming increasingly more systematic, not only towards the Legislative, but also towards the Judiciary. This is clearly evident, for instance, in the recent achievement by these associations in persuading the National Council of Justice (CNJ) to create a CNJ “Presidential Advisory Council” composed by those three entities, aiming at contributing with the analysis of normative proposals related to Brazilian judges.

This brief essay on the activities of AMB, Ajufe, and Anamatra suggests that there is an increasing expansion of public action by these organizations, either aimed at strengthening their internal corporate life or seeking a deeper embeddedness into the public sphere by means of pressing – individually or collectively – the powers towards their agendas. As to these latter, they are often related to strictly corporatist demands. Perhaps the primary challenge to these associations, which is already present nowadays and may expand in the coming years, refers to avoid the inexorable densification of the internal corporate life resulting in reflexive blockade in relation to external issues. The increasing presence of the Judiciary, its institutions, stakeholders, and procedures in the Brazilian social and political life seems to demand an expansion of the public activities of these associations towards less corporatist and

more universalist agendas, which transcend the simplistic interests of Brazilian judges. If these associations worked with parties, university departments, NGOs, and other professional associations, they could play an important role in the formation of what Maria Alice Rezende de Carvalho (2007), in a dialogue with Pierre Lévy, called “collective intelligence”, a contingent organization which, based on a public and permanent dialogue, operates towards more universalist agendas, thus contributing for the intensification of the processes of political and social democratization of the country.

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