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# Impartiality, Gender Stereotypes, and Judiciary Corruption*

## Imparcialidad, estereotipos de género y corrupción judicial

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**Abstract:** This article analyzes gender stereotypes in legal reasoning in contexts of severe judiciary corruption, which results in the violation of impartiality. The author maintains that it is the impunity of judiciary corruption, associated with structural discrimination, which largely explains the cynicism in legal rulings on gender violence. She also proposes that judicial virtues are essential to face corruption in the judicial arena.

**Key words:** Neutrality, impartiality, judiciary corruption, virtues, gender stereotypes

***Resumen:*** Este artículo analiza el uso de estereotipos de género en la argumentación jurídica en contextos de severa corrupción judicial, lo que resulta en la vulneración del principio de imparcialidad judicial. La autora sostiene que es la impunidad de la corrupción judicial, asociada a la discriminación estructural, la que explica en gran parte el cinismo en la fundamentación de las decisiones judiciales sobre violencia de género. Asimismo, propone que las virtudes judiciales son esenciales para enfrentar la corrupción en la actividad jurisdiccional.

***Palabras clave:*** Neutralidad, imparcialidad, corrupción judicial, virtudes, estereotipos de género



## I. INTRODUCCIÓN

Jerome Frank (1947) wondered, in the first half of the last century, what chance was there of an intelligent attack on the problem of how to lessen the diabolical effect of factors such as dishonesty in the resolution of cases if such factors were not included in the study of how courts function? (p. 1325). The question remains valid in a country as Peru with severe problems of judicial corruption.

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The notorious judicial corruption scandal uncovered in the country in 2018 involves a former justice of the Supreme Court, the former president of the Superior Court of Callao, supreme prosecutors, and former members of the National Council of the Magistracy for their alleged links to the criminal organization "Los Cuellos Blancos del Puerto" (The White Collars of the Port), made up, additionally, of lawyers and businessmen. This scandal was uncovered by an investigative journalist, thanks to a set of audio files of telephone conversations in which the characters themselves told or alluded to their misdeeds, revealing how they had turned the presidency of the Superior Court of Callao, a part of the Supreme Court and Supreme Prosecutor's Offices, as well as the National Council of the Magistracy, into spaces for the execution of acts of corruption[1].

To give just one example, a police investigation was opened in 2014 against the then Superior Court Judge, César Hinostroza, for the ownership of two houses in Miami that he did not report as a public official. However, the prosecutor's office closed the case with the explanation that he only owned the first house, but not the second, and that his wife had bought the latter without his knowledge[2]. In December 2015, César Hinostroza was appointed Supreme Justice by the former National Council of the Magistracy[3].

In 2015, in a speech given by the chief Superior Court Judge Walter Ríos, who would be the future president of the Superior Court of Callao and protagonist of several audio files, noted that one of the fundamental objectives of the improvements of the justice system was "to consolidate in Peru an independent, predictable, and modern justice system, based on ethical and moral principles, protective and promoter of legal certainty, guarantor of effective judicial control against a possible abusive use of power"[4]. This speech is a small sample that such characters had only rhetorically adhered to the rules of law and constitutional principles, since their actions show contempt for them.

On the other hand, I do not think it is a coincidence that one of the first audios released was that of a telephone conversation with former Supreme Court Justice César Hinostroza, in which he allegedly negotiated the sentence of a rapist of an eleven-year-old girl ("What do they want? To lower his sentence or for him to be found innocent?")[5]. This type of acts could explain the open unreasonableness, the cynicism

1 See IDL-Reporteros (2018a, 2018b).
2 See Ahora (2018).
3 César Hinostroza was removed from the position of Supreme Court Justice for the violation of the Constitution by Congressional Legislative Resolution No. 04-2018-2019-CR, published in the *Official Gazette El Peruano*, Legal Norms section, on October 6, 2018.
4 See Ríos (2015). It should be noted that Walter Ríos was arrested on July 15, 2018, and remains in pre-trial detention.
5 See IDL-Reporteros (2018c).

of the arguments that can be seen in several judicial decisions in cases of gender violence. Particularly outrageous, because of the effects they have on the lives of the victims, are those judicial (and prosecutorial) decisions that employ stereotypical arguments about women, continuing the impunity of gender violence perpetrators. I have the impression that the judicial corruption-unreasonableness relationship occurs more frequently than we think. Obviously, this does not prevent us from recognizing that there are also honest judges and prosecutors at all levels who day after day honor the important function entrusted to them.

As Frank (1947) also noted, attention should be paid not only to the values of democracy, but also to the factors that cause these values to be frustrated in the courts (p. 1324). Among the former are judicial impartiality and equality; among the latter, judicial corruption and structural inequality.

## II. IS THE LAW NEUTRAL OR NON-VALUING?

The term "neutrality" is sometimes used for different philosophical problems and with various meanings. I have roughly divided these uses into three groups, the last of which is more directly linked to law and judges.

A first use of the term is to allude to one of the characteristics of the rationalist normative project of the Enlightenment, as well as that of its successors (ethical constructivism or dialogical ethics of Kantian influence) (Thiebaut, 1992, p. 29), which imagine the agents in charge of designing the basic structure of society as free, equal, and independent (Nussbaum, 2016, p. 109). These are ethical theories that are formulated from what is considered a neutral or impartial point of view, with the aim of constructing a critical morality or proposing institutional designs.

A set of criticisms against such theories, like those of the communitarians, are directed at the assumptions from which the proposals of political liberalism start: An abstract, rational, decontextualized, disembodied, rootless individual, in an original position covered by the veil of ignorance or in ideal conditions of dialogue (Rawls, 1985; Habermas, 2010). These assumptions of a formal and abstract ethical theory have served to denounce such projects for being formalistic, of appealing to an empty proceduralism, of not engaging with substantive moral concepts, and of being unable to account for the breadth or depth of the human moral sphere (Thiebaut, 1992, pp. 35 and 37). There have been liberal responses to such criticisms. It has been pointed out, for example, that justice as fairness includes certain political virtues such as tolerance, reasonableness, and a sense of fairness (Rawls, 1988, p. 263); and that it is not a matter of value neutrality, since liberalism defends values such as

personal autonomy (Nagel, 2003, p. 38). A sector of liberalism has also defended the basic needs approach to support the principles of justice (Garzón Valdés, 2001, p. 240) or that of capabilities (which is oriented to the result and not to the procedure), questioning an idealized rationality (Nussbaum, 2016, pp. 110, 164 and 173).

A second use of the term, also linked to liberalism, refers to the neutral attitude that the State should have towards different conceptions of the good (particular definitions of the good, people's life plans) insofar as liberalism separates the just (or right) from the good, the public from the private. In this second sense, neutrality is associated with the idea of tolerance and respect for difference, with the attitude of the State as an impartial arbiter that provides "an equitable framework within which the individual is free to pursue his or her own good in his or her own way" (Swift, 2016, p. 206). This approach has also been criticized because it does not presuppose a neutral theory of the good, but rather a liberal and individualistic conception according to which "the best that can be desired for someone is that he pursue his own path, as long as it does not interfere with the rights of others" (Nagel, 1973, p. 228). Likewise, feminism has questioned the liberal separation between the public and the private, despite the fact that both liberalism and feminism defend "some conception of individuals as free and equal beings, emancipated from the ascribed and hierarchical bonds of traditional society" (Pateman, 2009, p. 38).

In the case of feminism, the separation between the public and the private (the neutral attitude of the State towards the different conceptions of the good) has been questioned for not taking into account the patriarchal ordering of society and for hiding the social reality that it contributes to construct (Pateman, 2009, p. 39), as well as for perpetuating relations of discrimination against women (by excluding from theoretical concern the space of family relations) (Turégano, 2001, pp. 319-329). On the contrary, feminism has argued that the private and public spheres are completely related (Pateman, 2009, p. 43), multivalent, and controversial (Fraser, 1997, p. 157).

Farrell (1994) is right in pointing out that there is no single conception of neutrality, nor is there a homogeneous position on the role that neutrality plays in the liberal state (p. 179). For the purposes of this article, I would just want to specify that a sector of liberalism defends that the just State must respect the various conceptions of the good that are compatible with basic principles of justice (material values). In a work subsequent to the *Theory of Justice*, Rawls (2006) affirmed that the just and the good were complementary, and that the principles of justice imposed limitations on permissible lifestyles (p. 206). Therefore, tolerance with respect to those lifestyles or life plans cannot be

indiscriminate (Beltrán, 2014, pp. 214 and 224). Rather, some liberals point out that we can distinguish between better and worse life plans, that the State can encourage leading valuable lives and discourage people from wasting their lives (promoting art, taxing gambling, etc.) (Swift, 2016, pp. 197-198 and 208-209), as well as that one form of collective life is superior to another when in it the possibility of deception and coercion is lower (Garzón Valdés, 2001, p. 241). Thus, for a sector of liberalism, both the framework in which decisions about life plans are carried out (Gargarella, 1999, p. 20) and the redistribution of resources are important (Nagel, 2003, p. 31; Swift, 2016, p. 191).

### II.1. Neutrality and Law

The third use of the term is directly associated with law; more specifically, with the formalist conception. As I have pointed out earlier (Villanueva, 2020a, p. 277; 2020b, pp. 55-57), legal formalism arose in the second half of the 19th century with the idea that law, as a science, was objective and neutral. Even today, formalists defend that the application of laws does not obey evaluative criteria, but adheres to the literal tenor of the regulations, completely disregarding the justification of the law or the objectives it pursues (Pintore, 2017, p. 50). This corresponds to the idea that legal reasoning is exclusively subsumptive; therefore, judges are neutral because they do not make assessments or resolve legal problems motivated by personal criteria or political ideology.

However, the notion of neutrality associated with law and judicial activity was harshly criticized by members of American legal realism, by the *Critical Legal Studies* and by the legal feminism. Also, by those who have argued that neutrality contributes to disguise a servile attitude towards political power (Andrés, 2002).

The American legal realists, starting in the 1920s, questioned judicial neutrality (the idea that judges do not make assessments), highlighting how conservative judges abandoned this alleged neutrality to exercise judicial activism and discretion against liberal laws (Pérez Lledó, 2008, p. 78). Many years later, in reference to the United States, Dunkan Kennedy (2013), one of the most important representatives of *Critical Legal Studies*, pointed out that there are always ideological motivations (liberal or conservative) in judicial rulings, which —however— present themselves as "technical, deductive, objective, impersonal or neutral" (pp. 30 and 36). For Kennedy, there are no criteria of correctness, beyond the deployment of interpretative tools (p. 44). Likewise, for that author, the apparent objectivity consists in the fact that the application of a norm to a case appears "to be a necessary, obligatory, and non-discretionary procedure" (1999, p. 102), although judges shape the law in one direction or the other (2013, p. 30). Thus, depending on

the type of judge, they decide in a discretionary manner (according to their political ideology, liberal or conservative) how to resolve cases (pp. 27-84). For *Critical Legal Studies,* the law, far from being neutral, contributes rather to maintaining the different hierarchies existing in society (including those of gender) and to freezing social reality (Gordon, 1987).

For its part, legal feminism has also strongly criticized neutrality as a characteristic of law and its application. Feminist legal theory has pointed out that such an idea has served to reinforce patriarchy, denouncing that law has been created, applied, and interpreted considering only the male perspective (Bartlett, 2011; Faccio, 1996; Jaramillo, 2009; MacKinnon, 1987; Mossman, 1991; Olsen, 1990; West, 2000). In that sense, neutrality was simply the masculine model; masculinity or men's being was the reference (MacKinnon, 1991, pp. 381-382). A body of law and judicial decisions have served to demonstrate the lack of neutrality (because of the male bias) of many laws and judicial decisions.

Finally, neutrality has also been questioned for having served as an ideological (counter) value, "as a cover for judicial attitudes characterized by their integration into the politics of power in action, especially at a time of absence of democratization and proscription of pluralism" (Andrés, 2002).

Criticisms of the neutrality of law and judges have been made from various perspectives or legal conceptions and with different purposes, but with a common concern about biases in the legal sphere. For this reason, I consider it pertinent to say something, albeit very briefly, about the post-positivist conception, which, in my opinion, is the one that gives the best account of the law of constitutional states. Within this conception are authors such as Alexy, Dworkin, MacCormick, and Atienza.

For legal postpositivism, the law cannot be considered neutral, in the sense of non-valuing, since it incorporates rights that it must protect (it aims at correctness, at objectivity); it is not an exclusively authoritative phenomenon, but a task that seeks to achieve certain purposes and values (Atienza, 2017, p. 273). Such rights condition the content and application of the rest of the legal system. Thus, the law imposes limits that are not only formal, but substantive; and, therefore, not just any content should have a place in it.

If the law imposes substantive limits, this implies that legislators cannot approve any type of regulation nor judges resolve cases according to subjective criteria. Postpositivists such as Atienza (2017) claim that ethical cognitivism makes it possible to account for important aspects of the practice of law, such as that which corresponds to the justification of judicial

decisions (pp. 195-196). Even a positivist such as Prieto Sanchís (2003) argues that if the legal landscape is changed by the incorporation of principles in the Constitution, it is in the relevant role to be assumed by legal argumentation (p. 133); that is, the rational justification of the value judgments contained in judicial decisions (2001, p. 34). A judge would not adequately motivate a decision if, after giving the reasons why he or she considers that the individual accused of a crime should be acquitted, he would point out that "his decision does not pretend to be the correct decision, but, simply, one in favor of which reasons can be given that to him seem acceptable" (Atienza, 2017, p. 196).

Post-positivists claim that there is room for rational discussion of rights and that the value judgments contained in judicial decisions do not express mere personal preferences, but that reasons of a certain type can be given in their favor, to which an objective character can be attributed (Atienza, 2017, p. 194)[6]. The standard theory of legal argumentation has dealt extensively with the objective criteria that give a rational character to the practice of justifying legal decisions (Atienza, 2014); among them are universality, coherence, consistency, or reasonableness. However, in this article I basically address a class of reasons that should be excluded from the law, arguments that should have no place in the law because they do not meet at least one of the criteria of practical rationality (consistency with constitutional principles, with the substantive criteria of correctness). This is the case of stereotypical arguments.

Osborne (1995) points out that freedom and equality do not simply reign between men and women (p. 510). The law is not applied in a vacuum, but in a certain context, with certain characteristics, which explains that although formally there are no regulations that directly discriminate against women, it is possible to identify with some frequency judicial decisions whose argumentation is discriminatory. Nevertheless, the fact that such decisions are handed down does not mean that the objectivity of the law must be renounced. On the contrary, if rights are to be taken seriously, skepticism towards legal regulations and reasons must be rejected; rather, we must have criteria that allow us to identify bad arguments (Dworkin, 1987, pp. 248-253) and to question incorrect judicial decisions when they incorporate reasons that do not fit the law.

An impartial judge must be objective. Objectivity and application of the law are not incompatible. As Dworkin (1985) stated, it is a matter of objectivity of reasons, of arguments (pp. 171-174). The law is not only power, but also values and reasons (or arguments) of a certain type.

6 As Atienza (2017) points out, norms (rules) assume value judgments as they are the result of value weightings; a radical separation between norms and values cannot, therefore, be drawn (pp. 207-208). Values, such as the principles of dignity, equality, or fairness, are also susceptible to objective, rational justification (p. 215).

Judges are not the lords of law, but the protectors of rights (Atienza, 2017, p. 226).

## III. JUDICIAL INDEPENDENCE AND IMPARTIALITY

Before dealing with the content of these principles, I must refer to the distinction between the context of discovery and the context of justification, between explanatory reasons and justifying reasons. As is known, the context of discovery has to do with the factual issues (reasons or causes) that lead to a decision (ideology, social class, religious beliefs, etc.), with the reasons that explain it; on the other hand, the context of justification has to do with the reasons that validate or justify a decision, with the reasons based on law (Villanueva, 2019, pp. 461-463; 2020a, pp. 277-278; 2020b, pp. 64-65). The obtaining of an undue advantage by a judge in exchange for deciding should be included in the list of reasons, of explanatory reasons.

According to Aguiló (1997), a post-positivist, the principles of impartiality and independence translate into the duties of judges as a correlate of the right of all people to be judged according to the law (p. 75)[7]. Both principles operate for the benefit of the judiciary. The duty of independence seeks to control the motivations (motives) of the judge against influences beyond the law that come from outside the process, i.e., from other judges, branches of government, the media, etc. (Aguiló, 2009, p. 30; Ernst, 2003, p. 235). Thus, Andrés (2012) distinguishes between external and internal judicial independence. The former protects judges from possible interference by other bodies of power, while the latter "protects the jurisdiction against itself, that is, against the intrusions that may come from the institutional field itself" (pp. 49 and 55).

On the other hand, the duty of impartiality is defined by Aguiló (2009) as "the duty of independence vis-à-vis the parties in conflict and/or the object of litigation" (p. 30; STC No. 2465-2004 AA/TC, § 9). This duty seeks to control the motivations (or motives) of the judge against influences beyond the law that come from the jurisdictional process itself. To that extent, impartiality requires the application of the law to be carried out without any bias in favor or against some of the parties (Bartlett, 2014, p. 376). An impartial judge is one who does not allow his or her personal preferences or prejudices to influence the judgment (Vasquez, 2015, p. 167), one who is free from bias or preconceptions about the justiciable (Clérico, 2018, p. 81; *Herrera Ulloa v. Costa Rica*,

7 According to Aguiló (1997, p. 74; 2009, p. 29), the normative requirements of the principles of independence and impartiality should not be reduced to guarantees to facilitate their exercise, such as irremovability, self-government, or the possibility of recusal or inhibition. The case of former Justice César Hinostroza and Judge Walter Ríos confirms Aguiló's thesis.

2004, § 137.3). The duty of impartiality "prohibits the judge from deciding (acting) on incorrect grounds" (Aguiló, 2009, p. 32).

The European Court of Human Rights (ECHR) has stated that impartiality has a subjective and an objective aspect. According to the first aspect, the judge must be free from personal bias. From the objective aspect, the judge must offer sufficient guarantees so that there is no legitimate doubt about his or her impartiality. Under the objective analysis:

> It must be determined whether, apart from the personal conduct of the judges, there are ascertainable facts that may raise doubts regarding their impartiality. In this sense, even appearances may be of some importance. What is at stake is the trust that the courts should inspire in citizens in a democratic society and, above all, in the parties in the case (*Pabla KY v. Finland*, 2004, § 27).

Among the prejudices from which the judge must be free are those that respond to sexist biases, to gender stereotypes. Prejudice or bias, even if it is unconscious (Papayannis, 2016, p. 37), is expressed in stereotypical arguments and in a discriminatory motivation; it can, therefore, be unmasked or unveiled. Similar to the ECHR, the Inter-American Court of Human Rights (IACHR) has held that:

> Impartiality requires that the judge who intervenes in a particular dispute approaches the facts of the case subjectively free of any prejudice and, likewise, offering sufficient guarantees of an objective nature to inspire the necessary confidence in the parties in the case, as well as in the citizens in a democratic society (*Duque v. Colombia*, 2016, § 162).

Stereotypical arguments are inconsistent with the principles of equality and judicial impartiality. Stereotypical representations are part of cultural injustice, rooted in social patterns, and "in processes and practices that systematically place some groups of people at a disadvantage compared to others" (Fraser, 1997, p. 23). Gender prejudices, biases or stereotypes should be excluded from judicial argumentation, as they are not justifying reasons (Villanueva, 2019)[8]. If a judicial decision is based on a gender prejudice or stereotype, not only is the right not to be discriminated against violated, but also the principle of judicial impartiality. Fraser (1997) states that sexism is a disguised particularism that hides behind

8 The IACHR has referred to judicial decisions that are based on gender stereotypes (*Atala Riffo and Daughters v. Chile*, 2012, §§ 124-126 and 146; *Gutiérrez Hernández v. Guatemala*, 2017, § 173), to the use of stereotypes in investigation and prosecution (*Véliz Franco v. Guatemala*, 2014, § 209; *Velásquez Paiz et al. v. Guatemala*, 2015, §§ 181-191 and 200; *Gutiérrez Hernández v. Guatemala*, 2017, §§ 170, 175 and 184; *López Soto et al. v. Venezuela*, 2018; §§ 215, 220, 231-232, 236, 240-257 and 278; *Azul Rojas Marín et al. v. Peru*, 2020, §§ 181 and 199-202), and to the assessment of evidence and stereotypical notions about victims of gender-based violence (*Gutiérrez Hernández v. Guatemala*, 2017, § 209).

the parody of universalism (p. 9). If the decision is the result of prejudice, it is arbitrary (Waldron, 2005, p. 199).

Aguiló (1997) is right in questioning the understanding that the independent judge is one who acts according to his own criteria, since this implies ignoring the institutional position of the judge, which rather demands for him to be independent even of his own autonomously accepted creeds (p. 76). For this author, in the ideal of the impartial and independent judge, the explanation and justification of the decision coincide (2009, p. 42).

Finally, in relation to judicial neutrality, I should point out that Aguiló (2009) distinguishes two moments in the judge's actions: When he acts as director of the process and when he resolves the conflict. The principle of impartiality requires the judge, as the director of the process, to be neutral towards the parties during its development "so as to maintain balance and equidistance before the subjects as parties in the process" (p. 43). Throughout the process, the judge gathers information, in an equidistant and neutral manner, which he evaluates at the time of resolving the case. However, the impartial judge is not neutral when deciding the outcome of the conflict (when determining the proven facts and the due consequences), as this requires balancing interests and values, "and very often these are not precisely in the middle ground" (2003, p. 53; 2009, p. 43). At that point, neutrality seems to be of little value because impartiality requires decisions committed to criteria of substantive correctness (2009, p. 44).

## IV. CORRUPTION, DESTRUCTION AND DISLOYALTY TO THE SYSTEM

Corruption is usually described as a permanent phenomenon that occurs in democratic, authoritarian, or dictatorial governments (González Amuchastegui, 1999, pp. 7-8; Vásquez, 2007, p. 207). In this article, we are interested in the severe judicial corruption in democracy, as in the Peruvian case.

An act of corruption implies the breach of a positional or institutional duty with the purpose or expectation of obtaining an undue benefit (which may be economic, sexual, political, etc.) for the person who carries out the act or for a third party (Garzón Valdés, 2004, p. 14; González Amuchastegui, 1999, p. 14). Corruption is a phenomenon related to a system of regulations or normative practice, since the regulations that govern the position held or the function performed are transgressed (Malem, 2002, p. 33; Lifante, 2018, p. 89). Hence, corruption occurs in different spheres (political, judicial, corporate, educational, sports, etc.) and has a destructive element for the system of

regulations (Vasquez, 2005, p. 131). It should be added that the motive for the act of corruption (obtaining an undue extra-positional benefit) remains hidden and that acts of corruption do not necessarily involve the violation of a criminal norm.

As González Amuchastegui (1999, p. 14) and Vásquez (2007, p. 209) state, in the phenomena of corruption, the presence of a decision-maker or authority is necessary; that is, an agent with the capacity to make decisions and whose activity is subject to certain types of duties. The violation of the duty implies an act of disloyalty to the normative system of reference (González Amuchastegui, 1999, p. 14) and even treason (Vásquez, 2007, p. 210).

Citing Laporta, González Amuchastegui (1999) states that the ultimate cause of corruption is the agent's decision, the voluntary act of carrying out a corrupt act (pp. 20-21). Undoubtedly there may be other causes that facilitate corruption (absence of sanctions, over-regulation, low wages, etc.), but the ultimate cause is a personal decision. Evidently, the fact that the ultimate cause of corruption is a personal decision does not mean that the factors that facilitate it or the search for institutional brakes against it should be neglected.

The institutional duties that a corrupt act violates are those "that are undertaken by virtue of the voluntary acceptance of some position and that are valid only for those who perform them" (Garzón Valdés, 2004, p. 14). According to Lifante (2018), these institutional duties, especially in the case of public functions, are complex as they require care and attention over a prolonged period of time. According to this author, such duties are defined by their connection with the promotion of certain values, ends or states of affairs that are considered valuable (pp. 99, 105 and 107). Thus, a given role or function in a social institution is committed to the pursuit of the ends that justify its existence or its purposes (p. 99); consequently, the fulfillment of the duty is not dissociated from the responsibility of public officials to promote such ends and values (p. 116). Therefore, according to Lifante, a corrupt decision in the public sphere is one in which the decision-making body replaces the ends and values to be ensured in the exercise of the public function with other purposes. And disloyalty also occurs with respect to those ends and values (p. 112).

As has been pointed out, corruption always has a destructive effect, since the benefit is obtained by the authority or the decision-maker in violation of his or her duties; in that sense, corruption eats away at the normative system in question. The serious aspect of severe judicial corruption is that it directly attacks the law as a whole, so that the set of rules, principles, and values that judges are called upon to (have the duty to) protect, starting with the value of justice itself, is harmed. Corrupt

judges adhere to regulations only rhetorically. They abandon what Hart (1997) called the "internal point of view" (pp. 89-90), instead of being the first to accept and use the rules and principles as guides to conduct or reasons for action[9]. In this way, and as demonstrated by the audio files mentioned in this article, the law becomes a mere power game in which legal regulations are nothing more than instruments of deception (Schedler, 2005, p. 87) that fall, as Frank (1947) said, into the trash can (p. 1325). Severe judicial corruption undermines the credibility of judicial decisions and legal reasons, destroying the trust that citizens should have in their judges. Such disloyalty to the law is inexcusable in a constitutional state.

### IV.1. Judicial Corruption and Lack of Virtue

Judicial corruption in Peru is the type of problem that Garzón Valdés (2007) would describe as old and persistent, as it does not have yet an adequate solution (p. 224). These networks are made up of trial lawyers, law firms, judges, and prosecutors, as well as employees of the Judiciary, and the Public Prosecutor's Office (CAJ, 2003, pp. 70-96). According to an investigation of four law firms in Lima, judicial corruption can translate into the payment of sums of money for expediting judicial proceedings, admitting appeals filed after the deadline, issuing "tailor-made" resolutions, allowing one of the parties to draft the sentence, disappearing court files, obtaining copies of resolutions and briefs from the opposing party before they are officially notified or of interrogatory sheets before the hearing (Quiñones, 2018, pp. 8, 14 and 107-138). The currency of exchange is also diverse (Jiménez, 2019, p. 631).

On the other hand, one of the causes that can lead to corruption at the highest hierarchical level is how the Chief Justice to the Supreme Court is elected: a vote among the justices that comprise it and by secret ballot. During the "electoral campaigns", there are events financed by third parties outside the judiciary, who, as Ramírez (2019) states, aspire to obtain benefits if their candidate wins the chief chair of the Supreme Court. Likewise, the person who offers his or her vote usually demands or receives benefits, such as, for example, being part of a certain chamber and being accompanied by his or her favorite colleagues, trips to courses, leaves of absence, etc. (p. 576)[10]. It should not be forgotten that the Chief Justice of the Supreme Court has full discretion to form the chambers, even disregarding the specialty of the judges (pp. 579-580)[11].

9 According to Alexy's (2008) interpretation of Hart's internal point of view, it is the one who adopts the participant's perspective; that is, "the one who in a legal system participates in an argumentation regarding what is ordered, prohibited, permitted in that legal system" (p. 368). For Alexy, at the center of the participant's perspective is the judge, who must decide correctly. On the other hand, he adopts the perspective of the observer who asks how a decision is actually made in a given legal system rather than what is the correct decision.

10 On reciprocal favor networks, the audio file can be heard on TVPerú Noticias (2018, July 13).

11 To listen to the audio files, go to TVPerú Noticias (2018, July 22; 2018, August 7).

The audio files of the judicial corruption scandal also reveal another type of network, that of reciprocal favors among some Supreme Court Justices. In the case of Supreme Court Justice Martín Hurtado, for example, this led the National Board of Justice to apply a precautionary measure of provisional suspension against him from the position of supreme justice for six months, because he asked César Hinostroza (who was part of another chamber) to intervene in the processing of a criminal case that was going to be taken to the Supreme Court; he coordinated with the former supreme justice, as a favor, the hiring of staff under CAS (Administrative Service Contracting); and assisted a person —at Hinostroza's request— who, apparently, was part of or had an interest in a judicial process (Resolution No. 136-2020-JNJ, July 20 of 2020). And this is just one example of the different shapes that corruption can adopt and the different currencies used.

As can be seen, one of the factors that could explain the lack of an adequate response to judicial corruption is that it is entrenched even at the highest levels of the justice system. Therefore, the case of "Los Cuellos Blancos del Puerto" perfectly illustrates what Andrés (2003) calls "the criminal degradation of power" (p. 248). This entrenchment would also explain why the corrupt image of the justice system contrasts with the lack of hard data on judicial corruption (Pásara, 2005, p. 106).

Vásquez (2005) distinguishes between two types of corruption: bribery and extortion. According to the aforementioned author, "a decision-maker is bribed when given a benefit to violate his or her obligation and a decision-maker is extorted when given a benefit to comply with his or her obligation" (p. 131). In both bribery and extortion, the motive or cause of the judicial decision is improper (obtaining an undue benefit).

Criminal degradation of power is threefold in the case of judicial corruption. First, because, as Frank (1947) argued, judges should be the guardians of values (p. 1326) and are called to play a relevant role in the protection of fundamental rights, since "because of their office or position, they have specific duties and responsibilities that involve the fulfillment and protection of constitutional goods, such as the proper administration of justice" (STC No. 2465-2004-AA/TC, § 13). Secondly, because the Judiciary is the most important mechanism of accountability in a democracy, where the most serious cases of corruption should be brought. Thirdly, because the judge must be a subject who enjoys social credibility given the important role he or she plays. Unlike what happens in Peru, in countries where there are no severe problems of judicial corruption, the Judiciary is seen by the public opinion as the public power called to deal with corruption cases (Andrés, 2003, p. 249), the only one capable of dealing with political corruption

(Atienza, 2017, p. 226) or the instance where the injustice of the political process can be rectified (Fiss, 1999a, p. 142).

### IV.2. Judicial Virtues

The exercise of the jurisdictional function, according to Andrés (2012), has an inevitable dimension of counter-power in the face of all kinds of interference, which explains why judicial independence is considered an uncomfortable value (pp. 49 and 60). Therefore, in my opinion, in justice systems with severe corruption problems, judicial virtues cannot be overlooked. Such virtues not only contribute to the fulfillment of the duties of impartiality and independence (Atienza, 2017, p. 24), but are essential to face (and denounce) different types of interference.

As Camps (1990) states, virtues are learned character traits, "cherished" by the will, an individual way of being (p. 22). Virtues are human qualities that are acquired (MacIntyre, 2001, p. 237), attitudes that are formed over time. Thus, virtue ethics focuses on the character of the moral agent (what kind of person should I be?), on the education of feelings to encourage people towards the good in order to make life together more dignified (Camps, 1990, p. 12; Atienza, 2017, p. 229). It is distinguished from duty ethics as these provide a precise catalog of our moral duties (deontologism and consequentialism) (Farrell, 2003, p. 149) and in them the central category is duty (Camps, 1990, p. 18). In virtue ethics, questions of character traits occupy a central place because they have to do with what a "good person" (of integrity) would do in real life situations (Pence, 1995, p. 348).

Virtues are exercised in the context of practices; that is, in the framework "of any coherent and complex form of cooperative, socially established human activity through which the goods inherent in it are realized" (MacIntyre, 2001, p. 233). MacIntyre distinguishes between external goods and internal goods. The former are the object of a competition in which there are losers and winners; and, if these goods are achieved, they are owned and possessed by the individual (such as money or fame: The more someone has, the less there is for others). In contrast, internal goods are the result of competing in excellence, but their achievement is a good for the whole community that participates in the practice. The exercise of the virtues "tends to make us capable of achieving those goods that are internal to the practice" (p. 237).

According to Atienza (2017), to be a "good judge" requires more than just complying with legal regulations (and not incurring in civil, criminal or administrative liability), as it is necessary to have "professionally developed certain character traits that constitute judicial virtues" (p. 229). Following MacCormick, Atienza proposes some character traits that judges should possess: Good judgment, insight, prudence

(practical intelligence, knowing how to apply general principles to particular situations), high mindedness, compassion, and courage. These are character traits or virtues to which the aforementioned author adds temperance or self-restraint, which he understands as the quality that should drive the judge to use moderately the extraordinary power with which he or she is invested (p. 230).

In contexts of severe judicial corruption, however, it is necessary to refer to another more general virtue: honesty. It should be noted that, according to Dworkin (2014), one of the senses of responsibility as a virtue is honesty. Thus, the person who refuses an offering acts responsibly (p. 133).

In Peru, it is worrisome that the lack of virtues extends to some of the highest level judges, whose conduct should be exemplary and stimulate the development of virtues in others. Supreme Court judges should be models of excellence, especially for those entering the judicial career. As Atienza (2004) suggests, given that these are character traits that are formed or developed over time, thought should be given to the role of virtues in the promotion of judges to higher positions or in the selection of legal professionals for such positions (p. 24), as in the case of the positions of senior judges, supreme justices or judges of the Constitutional Court[12].

Clearly, judicial virtues do not replace knowledge of the law and the judge must know what he or she is doing when acting virtuously. The virtuous person acts on the basis of rational judgment (MacIntyre, 2001, p. 189).

I agree with Vásquez (2005) that from the internal point of view of the individual, education and moral convictions guided by a sense of honesty, decency, and sense of justice, are also antidotes against corruption (p. 144). Likewise, as proposed by González Amuchastegui (1999), it is necessary to think about strengthening the mechanisms of adhesion to the system to prevent it from being only rhetorical, since this is one of the weak points of contemporary democracies (p. 24). To this extent, certain virtues are required, which, as Camps (1990) states, are favorable to the exercise of democracy (pp. 23 and 30).



12 On the alleged appointment of a prosecutor in exchange for "10 *verdecitos"* (10,000 dollars), this can be heard in one of the audio files of Walter Ríos on TVPerú (2018, July 10).

## V. STRUCTURAL DISCRIMINATION AND STEREOTYPICAL ARGUMENTS

Law does not rule in an ideal world. In our region, its application takes place in contexts of structural discrimination that may explain to a large extent why stereotypical arguments are used in judicial decisions.

The IACHR has referred to structural discrimination in several cases, although it has not defined it[13]. The Committee on the Rights of Persons with Disabilities has gone a step further by stating that such discrimination:

> Manifests itself through hidden or covert patterns of discriminatory institutional behavior, discriminatory cultural traditions, and discriminatory social norms and/or rules. Harmful gender and disability stereotyping, which can lead to such discrimination, is inextricably linked to the lack of specific policies, regulations, and services for women with disabilities. Likewise, harmful practices are closely linked to and reinforce gender roles and power relations created by society, and may reflect negative perceptions or discriminatory beliefs about women with disabilities (General Comment No. 3, 2016, § 17e)[14].

This type of situation occurs when there are social structures of subordination (Añón, 2013, p. 130) or persistent forms of unjustified inequality in which it is possible to identify groups that are in a situation of disadvantage, which is historical and results in the violation of rights. These persistent forms of subordination or oppression are characterized by certain conditions such as lack of power, exploitation, marginalization, or violence (Barrère Unzueta & Morondo Taramundi, 2011, p. 22). Some, or more than one, of these conditions are present in the cases in which the IACHR has referred to structural discrimination.

It is not, therefore, a matter of transitory and fortuitous inconveniences or prejudices, but of power dynamics that lead to the persistence of subordination or disadvantage (Añón, 2013, pp. 148-150). On the other hand, groups do not necessarily have to be minorities and, although working with the category of group is more problematic than working with that of an individual, this does not deny the importance or validity of the idea (Fiss, 1999a, p. 139).

In cases of structural discrimination, the status of group members is determined in part by the status of the group (Fiss, 1999a, p. 139),

13 See *González et al. - "Campo Algodonero"- v. Mexico* (2009, §§ 208, 398, 401 and 450), *Atala Riffo and Daughters v. Chile* (2012, §§ 92 and 267), *Azul Rojas Marín et al. v. Perú* (2020, § 90) and *Trabajadores de la Hacienda Brasil Verde v. Brazil (*2016, § 343).

14 See also General Comment No. 20 of the Committee on Economic, Social, and Cultural Rights (2009, § 8b, 12 and 39), General Recommendation No. 34 of the Committee on the Elimination of Racial Discrimination (2011, § 6), General Recommendation No. 30 of the Committee on the Elimination of Discrimination against Women (2013, § 77), and General Recommendation No. 33 of the Committee on the Elimination of Discrimination against Women (2015, § 3).

which explains why discriminatory patterns of behavior (which are not always hidden) are identified in relation to them and stereotypes are established that have a negative impact on them. Although unfair treatment is experienced by people individually considered, the cause of such treatment "is that they share or are attributed some characteristics, traits, or prejudices typical of a collectivity" (Añón, 2013, p. 134). Barrère Unzueta and Morondo Taramundi (2011) use the term "subordiscrimination" to refer to acts of discrimination in systems of subordination or domination that originate in "deep injustices rooted in regulations and stereotypes suffered by some groups, which structure the State and the market, and which are not necessarily evident and intentional" (p. 19). For the aforementioned authors, what are known as motives or reasons for discrimination, such as gender, are axes, structures, or categories of a system of domination on which regulations, stereotypes and roles are built (pp. 31 and 40).

As far as women are concerned, the idea of group has been controversial, but one of the reasons for considering them as such is the fact that, for example, in terms of remuneration or positions of power or responsibility, they appear as a systematically underrepresented group (Añón, 2013, p. 133). It is enough to review the statistics on the presence of women in positions of political power and in the high courts of justice, or the remunerations in relation to men with equal responsibility, to verify the disadvantaged situation. It is stated that gender is a question of power, of male supremacy, and female subordination, since whoever holds it, according to that hierarchy, triumphs in the construction of social perception and reality (MacKinnon, 1991, pp. 386-387). The patriarchal system hierarchizes the genders, "creating social inequality where there is only sexual difference" (Osborne, 1995, p. 500).

According to Raquel Osborne (1995), "feminism was born of the contradiction between the formal proclamation of principles and their denial in practice for women" (p. 500). When stereotypical arguments are identified, it should not be overlooked that contexts of structural discrimination facilitate their use, since in these contexts such discriminatory practices are naturalized or normalized[15]. It should be remembered that gender discrimination can overlap with other factors, such as ethnicity or economic status (Crenshaw, 1991).

Gender stereotyping, Cook and Cusack (2010) argue, is not necessarily problematic *per se*, "but when it operates to eliminate individual characteristics, abilities, needs, desires, and circumstances in ways that deny people their fundamental rights and freedoms and create gender hierarchies" (p. 23). These authors classify the different gender

15 See General Recommendation No. 33 of the Committee on the Elimination of Discrimination against Women (2015, § 3).

stereotypes into four: Sex, sexual, sex roles, and compound stereotypes, which are those implicitly or explicitly found in the reasoning of the courts (pp. 29-34).

In the examples I will quote below, sexual stereotypes are of primary interest. These endow women and men with characteristics and qualities that serve to define acceptable forms of female and male sexuality; that is, to establish what society considers as acceptable sexual behaviors (Cook & Cusack, 2010, p. 31).

### V.1. Some Examples

In the introduction of this article, I referred to the judicial corruption scandal uncovered in 2018, one of whose protagonists is César Hinostroza, the former Supreme Court Justice. As I also pointed out at the beginning, there is an audio file of a telephone conversation in which this former judge is heard allegedly negotiating the punishment of the rapist of an eleven-year-old girl. Given the impact that the uncovering of corruption linked to the criminal organization "Los Cuellos Blancos del Puerto" has had in Peru, I have selected three sentences on gender violence adopted, unanimously, by the chambers that the aforementioned former judge was a member of, in which arguments that reinforce gender stereotypes are identified.

As I have previously pointed out, the use of stereotypical arguments in judicial decisions can be explained by the context of structural discrimination, since those in power are responsible for reinforcing and naturalizing stereotypes and discriminatory practices. What is striking in the Peruvian case is the instrumental, cynical use of such stereotypes by some Supreme Court justices, who, moreover, adopt decisions unanimously. It is also strange that judges who have a good reputation sign, along with others without such reputation, decisions based on blatantly unreasonable arguments. Unanimity in the adoption of decisions could be due to reciprocal favors among judges, which would violate the principle of judicial independence. In contexts of severe judicial corruption, where the currency of exchange can be so diverse, the use of stereotypical arguments and the unanimity of decisions must lead us to suspicion, even more so in the case of the highest instance of the Judiciary.

The first example is Appeal for Annulment No. 3303-2015-Lima (Second Transitory Criminal Chamber of the Supreme Court of Justice) because it has been speculated that it could be the sentence that resolved the rape case that was the subject of the aforementioned telephone conversation, the same one that took place on April 4, 2018. According to Montoya (2019), the case could have been resolved in the first part of 2018, but, due to a bad practice of the Supreme Court, which consists

of placing in the sentences a date prior to the one that corresponds to the day on which the case is actually voted, the decision of the Second Transitory Criminal Chamber is dated February 24, 2017 (p. 269). In any case, it must be insisted that this is not the only controversial sentence that former justice Hinostroza signed in cases of gender violence.

The acquittal decision of the Second Transitory Criminal Chamber of the Supreme Court, dated February 24, 2017, resolves the appeal for annulment filed against the sentence of the First Criminal Chamber for trials with inmates in prison of the Superior Court of Lima, which convicted Mauricio Faustino Huamaní Saldívar as a perpetrator of the crime against sexual freedom, in the modalities of rape of a minor (Criminal Code, article 173)[16] and sexual propositions to adolescents (art. 183-B)[17]. The reporting judge of the acquittal decision was former justice César Hinostroza.

The facts, according to the Public Prosecutor's Office, are as follows. The defendant, Mauricio Faustino Huamaní Saldívar, connected through Facebook with the 13-year-old minor, identified with code No. 78-2014, initiating a friendship that was extended through phone calls to the cell phone of the victim and a meeting to get to know each other. The defendant arranged to see the victim for the first time on March 26, 2014, to take her to a hotel, to which she agreed; however, she refused to have sexual intercourse. Nevertheless, all that day and the following day, the defendant forced her to have sexual relations. The victim met the defendant again on March 31, 2014, who took her to another hotel where they engaged in sexual intercourse until the next day. Finally, on April 2, 2014, the victim left her home to meet the defendant, but this time she was followed by her uncle. The minor met the defendant, who took her to a hotel; but, thanks to the intervention of a policeman, the defendant was taken to the Police Criminal Investigation Department.

The First Criminal Chamber for proceedings with inmates in prison of the Superior Court of Lima sanctioned the defendant for the crime against sexual freedom, in the mentioned modalities, based on: a) The statement of the minor, in the presence of the Public Prosecutor's Office, in which she emphatically stated that she had been a victim of rape by the defendant (single interview record); b) the legal medical

16 "Article 173 of the Criminal Code: Whoever has carnal access by vaginal, anal or oral way or performs any other analogous act with the introduction of an object or part of the body by any of the first two ways, with a minor under fourteen years of age, shall be sentenced to life imprisonment."

17 "Article 183-B. Propositions to children and adolescents for sexual purposes: Whoever contacts a minor under fourteen years of age to request or obtain pornographic material from him or her, or to propose to carry out any act of sexual connotation with him, her or with a third party, shall be punished with imprisonment of not less than six nor more than nine years.
When the victim is between fourteen and less than eighteen years of age, and deception is involved, the penalty shall be not less than three nor more than six years.
In all cases, a full disqualification penalty pursuant to Article 36, paragraphs 1, 2, 3, 4, 5, 6, 8, 9, 10, and 11 is also imposed."

certificate, which concluded that the victim was approximately 13 years old, that she presented old defilement and old unnatural acts; c) a photographic recognition record where it can be seen that on March 26, 2014, the defendant entered the hotel with the victim; and d) a psychological examination that concluded that the victim presented indicators of emotional distress due to traumatic experience of sexual nature.

In his preliminary statement, the defendant admitted to "having contacted the victim" and to having had sexual relations on two occasions, but with her consent. Since article 173 of the Criminal Code protects sexual indemnity, the consent of minors under 14 years of age is irrelevant. For this reason, the defendant alleged that he did not know the age of the victim at the time of sexual intercourse[18]. However, the First Criminal Chamber for trials with inmates in prison of the Superior Court of Lima stated that such allegation lacked support because, according to the legal medical certificate, the body development, secondary sexual characteristics, and dentition of the victim corresponded to a minor of approximately 13 years of age, "which was undoubtedly observed by the defendant from the first moment he saw the victim." Likewise, the criminal court held that according to the victim's characteristics (which could be seen in the missing persons police report, where her photo was included), she even appeared to be under 13 years of age.

Nevertheless, the Supreme Court acquitted the defendant. It is striking that at the beginning of the substantiation, the court points out that article 173 of the Criminal Code protects the "lack of suffering or involvement in any sexual contact" (fourth ground of the Supreme Court). What does this mean? That in other cases rape victims must suffer or that if an adolescent is involved with the aggressor, she can no longer be a victim? Doesn't this type of argument reinforce the sexual stereotypes that rape victims put up heroic resistance, are not involved, sexually or emotionally, with the aggressors and necessarily suffer physical violence? As the Committee on the Elimination of Discrimination against Women states, the use of gender stereotypes is harmful to the credibility of women's statements (General Recommendation No. 33, 2015, § 26).

In order to acquit the defendant of the crime of rape, the Supreme Court had to sustain that it was an error of type. To this end, the court pointed out, among other things: a) That according to the single interview record, the second time they went to the hotel, the hotel attendant knocked on the door of the room where the defendant and the victim were, asking the victim if she was a minor. She answered

18 Article 14 of the Criminal Code: "The error on an element of the criminal type or with respect to a circumstance that aggravates the penalty, if it is invincible, it excludes liability or aggravation. If it is vincible, the infraction shall be punished as culpable when it is foreseen as such in the law".

that she was 16 years old and that she had left her ID card at home, which the hotel attendant believed (with which the Transitory Criminal Chamber of the Supreme Court implied that the minor did appear to be over 13 years old). And b) that the forensic doctor had superficially examined the patient; therefore, it was not a suitable test to prove the real age of the minor (which should have been determined with a psychosomatic test). However, the aforementioned chamber of the Supreme Court did not refute the psychological examination, according to which the victim presented indicators of emotional distress due to traumatic experiences of a sexual nature, nor did it make any mention of the photo of the police record in which, according to the First Criminal Chamber for proceedings with inmates in prison, it was noted that the victim appeared to be even younger than 13 years of age. Nor did it justify why a hostel attendant has elements to evaluate the appearance of an adolescent, while a forensic doctor does not.

On the other hand, the Supreme Court also acquitted the defendant of the crime classified in article 183-B of the Criminal Code (sexual propositions to adolescents), basing the acquittal on another gender stereotype. To do so, it interpreted, without any basis, that, in order for the crime to be committed, the perpetrator must be the one who initiates the contact. Thus, it argued that the Public Prosecutor's Office had not gathered sufficient and suitable evidence to prove this and that, rather, the defendant had stated that the victim had contacted him, but that he had deleted the conversations.

As can be seen from the reading of article 183-B, the criminal offense does not require the perpetrator to be the one who first contacted the minor. Even if the minor had been the one who contacted the defendant, does the fact that she had the initiative exclude her from criminal protection? Does involvement with the aggressor exclude her from that protection? As is evident, the decision of the Second Transitory Criminal Chamber of the Supreme Court employs a stereotypical argument based on gender prejudice (an adolescent who takes the initiative cannot be a victim), which does not appear to be unconscious. Despite the stereotypical arguments, the purpose of the regulations in this matter (the protection of sexual indemnity) and what is clearly stipulated in article 183-B of the Criminal Code, the sentence was adopted unanimously.

The second case is Appeal for Annulment No. 269-2017-Junín, dated April 23, 2018, which acquitted Medarno Paulino Oré, a school teacher accused of raping his female student, whom he would have called to the classroom while the school assembly was taking place in the courtyard of the school. The reporting judge was also César Hinostroza. Neither the age of the victim nor the age of the defendant appears in the judicial decision. From the sanctions established in the articles quoted in the

sentence, based on the age of the victim, (Criminal Code, arts. 173, sub. 1, and 176-A, sub. 3), it can be deduced that the minor was 10 years old (fifth and seventh grounds of the Supreme Court). Is the omission of the information on the age of the girl —the alleged victim of a rape crime— a simple oversight? Did none of the other four judges of the court notice this omission?

One of the arguments on which the acquittal of the defendant was based was that:

> From a logical point of view, the alleged victim's account is close to fantasy, since according to the maxims of experience, the crime of rape is always clandestine, and the aggressor will avoid leaving traces or vestiges of the punishable act. Therefore, it is not plausible that the oral sex reported by the alleged victim was committed in the morning hours, in a classroom inside a school, when students and teachers are gathered to start the day's classes, as the alleged victim had reported (R.N. No. 269-2017-Junín, legal ground 18).

The Supreme Court Justices know that what characterizes sexual violations is that they usually occur without witnesses, as may have happened precisely in this case in which the teacher takes advantage of the school assembly to call his female student to a classroom where only the two of them were present (sixth legal ground). Does this allusion to fantasy not further reinforce the stereotype that victims of these crimes often lie? Could none of the judges have noticed that what the victim said was compatible with the circumstances in which sexual violations usually occur?

The third case is that of a sentence that acquitted a defendant of the crime of human trafficking (R.N. No. 2349-2014-Madre de Dios), dated January 2016, when then judge Hinostroza was part of the Transitory Criminal Chamber of the Supreme Court. According to that sentence, putting a 15-year-old adolescent, captured in one place and transferred to another in Madre de Dios, to work for thirteen hours a day, drinking liquor in a bar, and making passes (sexual relations) with clients, did not constitute human trafficking (modalities of labor and sexual exploitation), since it was not a job that exhausted the labor force, nor the primary purpose of the recruitment had been sexual exploitation. The type of criminal offense in force at the time of the events did not allow for this type of interpretation (Criminal Code, art. 153), but the sentence was adopted unanimously[19]. On the contrary, these are

19 "Article 153 of the Criminal Code: Whoever promotes, favors, finances, or facilitates the recruitment, transportation, harboring, reception or retention of another, in the territory of the Republic or for his exit or entry of the country, resorting to: Violence, threat or other forms of coercion, deprivation of liberty, fraud, deception, abuse of power or of a situation of vulnerability, or the granting or receipt of payments or benefits, for the purpose of exploitation, sale of children, to engage in prostitution, or to subject

blatantly unreasonable and cynical arguments that fail to protect the victims of trafficking and reinforce the stereotype that women are sexual objects for men. Moreover, if one compares the sentence in this case (R.N. No. 2349-2014-Madre de Dios) with another sentence on the same crime, but issued by a different chamber of the Supreme Court (R.N. No. 1610-2018-Lima), they do not only seem like decisions from different countries, but from different planets. As it is obvious, judicial predictability is non-existent, not to mention the affectation to judicial impartiality or the destructive effects to the legal system.

In the month of December 2016, Hinostroza was the reporting judge in another case of gender violence (serious injuries due to family violence), which was very high-profile, since the victim was a known performer (R.N. No. 1969-2016-Lima Norte). On that instance, the Supreme Court sanctioned the aggressor and, in the substantiation of the sentence, it was argued that violence against women was one of the most atrocious acts, that it was a cross-cutting phenomenon in all areas of the community, and that it was necessary to act effectively in response to the complaints. However, soon after (R.N. No. 3303-2015-Lima, February 24, 2017), Hinostroza looked like a different judge.

## VI. CONCLUSIONS

Legal systems incorporate values in the form of rights. Therefore, the law is not neutral in the sense of being non-valuing; rather, it imposes limits of a substantive nature, preventing judicial motivation from being discriminatory, as it happens when stereotypical arguments are used. Such arguments not only violate the principle of equality, but also the principle of judicial impartiality, which requires judges to resolve disputes from the law, free of prejudice or bias.

Stereotypical arguments are explained by the context of structural discrimination in which the law is applied; however, in countries such as Peru, the instrumental use of such arguments could also be explained by severe judicial corruption (and the different currencies of exchange). Without a doubt, this undermines the credibility of judges and has a destructive effect on the normative system by replacing the purposes and values of the legal system with different ones. It is, thus, critical to think about the importance of judicial virtues, such as honesty and self-restraint, since they are essential for tackling corruption, which

them to sexual slavery or other forms of sexual exploitation, forcing him to beg, to perform forced labor or services, to servitude, slavery or practices similar to slavery or other forms of labor exploitation, or extraction or trafficking of human organs or tissues, shall be punished with deprivation of liberty for not less than eight nor more than fifteen years.
The recruitment, transportation, transfer, harboring, reception, or retention of a child or adolescent for the purpose of exploitation shall be considered human trafficking even when none of the means indicated in the preceding paragraph are used".

ultimately contributes to guaranteeing equality and the fulfillment of rights as a whole.

Quiroz (2013) argued that Perú is a country deeply affected by systemic corruption, both in its distant and recent past (p. 39). And the worst thing is that, as Garzón Valdés (2004) states, the importance of corruption does not lie in the magnitude of the phenomenon, but in its character as a symptom of more severe and greater evils (p. 16). Inequality is undoubtedly one of them. Hence, it is imperative to fight the gender stereotypes or prejudices that are so evident, and often cynical, in judicial decisions, and which offend the judiciary's commitment to criteria of substantive correctness. Equality, as Fiss (1999b) says, is one of the core foundations of the legal system, it is "architectural" (p. 23).

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