JUSTICE AND SECURITY

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(I)
General Outline

Scant attention has been paid to the relationship between justice and security, and as yet public policy approaches that are based on the judicial perspective have failed to include that relationship. In the Americas, this type of public policy has generally been motivated by the routine perspectives of judicial disciplines, or has been guided by the need to directly support market-oriented economic reforms.[2] The issue of security has not been specifically considered from these points of view.

This situation, which is the result of changes that are taking place both nationally and internationally, must be remedied.

On a domestic level, the groups to which people belong (family, neighborhood, church, etc.) tend to be weakened during modernization processes, which stimulates an individualist culture. But while this situation may lead people to feel more autonomous, it also makes them more disorientated and leads to a need for important markers that can serve as guides.

While this process is sometimes the result of migrations, in large urban areas it seems to be more the result of the effect of the market and an increase in communications. The State, for its part, tends to change established forms of conduct and modify the symbolic role that it fulfilled up until a short time ago: instead of being a mediator between corporations or groups, it adopts or at least tries to adopt the role of symbolic regulator of actions and projects starting with the role it plays in the fiscal debt crisis.

The result of this process of loss of belonging is that people feel that their daily lives are ever more subject to risk and insecurity,[3] which leads them to demand that justice systems overcome problems that most of the region's administrative systems are simply not prepared to address. This, accompanied by globalization and the crisis of political representation, denies citizens the mechanisms that they used to use to channel their demands. As a result, these problems are often expressed in the form of rights before the courts, and judicial administration systems come to be seen as mechanisms for expressing social demands and overcoming insecurity and risk.

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[2] See PNUD et al, *Seguridad Jurídica e Inversiones,* San José: Proyecto Regional de Justicia, PNUD, 2001.

[3] Beck, U. "Hijos de la libertad: contra las lamentaciones por el derrumbe de los valores," in *Hijos de la libertad*, Buenos Aires: FCE, 1999; Cfr. Giddens, A. *The Third Way*, Cambridge, Polity Press, 1998, pp. 34 and following; Giddens, A. *Un mundo desbocado. Los efectos de la globalización en nuestras vidas*, Madrid: Taurus, 1999.

The issue of security is ever more present on the international agenda, a phenomenon that follows the same trajectory as the aforementioned process. Traditionally (i.e. during the Cold War) the problem of security was approached from the point of view of governments or states. But in today's international community –which is characterized by the disappearance of the bipolar order and the ever more explicit interdependence of practically every point on the globe- security becomes a much more important issue for ordinary citizens. This changing perception of the issue of the security as a benefit that governments offer their people has given rise to the concept of *human security.*

As presented in the United Nations Development Program's 1994 Human Development Report, this concept represents a radical change of perspective. Instead of emphasizing the security and integrity of the State, the concept of human development refers to the need to protect people from all risks and threats. As it is conceived in the aforementioned report, human security implies tackling two types of threats. On the one hand it is necessary to deal with the chronic threats that are derived from structural causes that have led to organized crime, hunger, repression and disease in many parts of the world. On the other hand, there are threats that invade people's lives and inspire fear and doubts about the future. The way in which we have come to understand *human security* clearly shows that domestic and international politics increasingly resemble the work of *risk management*.[4]

The concept of *human security* has not only been developed as a principal of international politics inspired by UNDP reports or actions undertaken by certain countries (such as the case of Canada within the Americas). It is also linked to developments in the social sciences, where it has been noted that human beings experience two different types of threats that produce radically different effects when considered from a political perspective. The first are external threats that can be attributed to nature, and the second are related to the decisions made by human beings. The sociological concept of risk is associated with the unexpected and at times unpredictable consequences of our own decisions. In the social sciences, public dilemmas have traditionally been seen as problems in the construction of social orders, a process that entails decisions to follow a set of regulations (the most obvious problems in social orders are those of corruption and institutional instability). However, risk creates a different dilemma that is separate from the problem of subjecting decisions to certain rules, namely calculating and distributing the costs and consequences of decisions that are made while following the rules. From a social sciences perspective, the society of risk is consistent with the post-industrial state. While the problem of welfare states was how to distribute the "commodities" of the industrial system, the society of risk has to deal with the

[4] Beck, U. "De la teoría crítica a la autocrítica de la sociedad del riesgo," in *La invención de lo político*, Buenos Aires: FCE, 1999, pp. 32 and following.

problem of how to distribute or calculate the "incommodities" of that same system.[5] However, countries' growing interdependence and the expansion of markets and communications has spread this phenomenon to every corner of the world to varying degrees.

It is likely that the risks that developing countries experience do not necessarily make them societies of risk. In other words, developing countries (including most of the countries in the Americas) are not societies of risk because their problems are still related to matters of social order. Yet if we consider their situation from the perspective of growing interdependence, we see that these are societies that *experience risk.*

The challenge for developing countries is thus twofold. They must deal with the growing risks associated with multiple decisions –many of which have been adopted outside of their borders- but cannot rely on a highly developed risk management system.

This is particularly important from the point of view of justice, as judicial administration systems can easily become overburdened by the challenges of human security when they are forced to deal with issues for which they are ill prepared. Such systems traditionally resolve problems of social order (they ensure that decisions are made in agreement with sets of rules) but not problems associated with risk (justice systems are not equipped to deal with an estimation of the consequences of human actions).[6] From the point of view of the principal of human security, the risks that people experience cannot be dealt with unless justice systems first fulfill their own innate and immediate function of establishing social order, which is probably the most urgent issue facing most of the countries in the Americas, particularly in Latin America.

This text attempts to bring together certain findings so as to examine the justice agenda from a security perspective. The discussion presented herein will allow us to consider the issue of justice and security from an academic point of view. Each of the issues examined creates different sets of problems, and it is likely that they are also intertwined throughout the region's countries. The text focuses on the problem of security as an issue of meeting expectations and suggests that a justice agenda from a security perspective should, before anything else, allow justice systems to install order before turning to the issue of risk. In this context, the strictly jurisdictional variables that may contribute to an improvement in the relationship between justice and security are examined.

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[5] Beck, U. Op. cit., p.34.
[6] Cf. Luhmann, N. *Sistema Jurídico y Dogmática Jurídica,* Madrid: Centro de Estudios Constitucionales, 1983.

This text suggests that justice systems should tackle the problem of security from three perspectives, namely: from the perspective of social order or meeting expectations (Section II); from that of the distribution of social commodities (Section III); and, lastly, from the perspective of risk itself (Section IV).

(II)
Justice and Security: Meeting Expectations

The relationship between justice and security is one of the oldest topics in legal and political literature. The texts available to us reveal that this link often appears as a statement regarding a given value –judicial security- that the law is called to serve. If this is taken to the extreme, security is seen as a specific judicial value for which all other values are sacrificed, including justice itself. In other words, the basic aim of law and the administration of justice is to guarantee certain types of future conduct in such a way that social life –which is threatened by the shadow of the future- can be more stable. From the perspective of normative components, security as a specific judicial value is *neutral*: societies with highly regarded normative components may lack security and, inversely, those with poorly regarded normative components may possess high levels of security. As de Tocqueville suggested, it is probable that countries are not differentiated by the form of government they possess, but by the degree to which their governments can be relied upon. This function is not satisfied just by the making of laws, but via an institutional system that is able to emit decisions that, in turn, are also predictable.

State institutions seek to adopt decisions on the basis of previously established rules. In the sense that a rule is an anticipated decision for an abstract type of circumstance, we can say that state institutions try to make anticipated decisions so as to reach a point of impartiality. Sociology has described this decision-making process as the transition from specific to universal guidelines, the latter of which allow for effective neutrality and performance evaluation. Conversely, decisions made on the basis of specific criteria tend to favor affective compromise and attached qualities, thereby prejudicing competitiveness and performance evaluation. This characteristic, which helps demonstrate the evolution of state institutions, allows us to explain why regulatory systems tend toward abstraction: abstraction allows us to relate to an ever more complex world. For this reason modern society is increasingly more abstract, justice-orientated and depersonalized: in extreme cases the most efficient administration is that which is able to best dominate the subjectivity of its people. On the other hand, a society with a low level of institutionalism tends to exasperate the subjectivity of its people, leading to social dependence, corruption, and the predominance of family links, thus impeding efficient and adaptable cooperative structures.

Recent studies have identified trust as one of the factors that influence the innovative capacity and growth of societies. In general, we can say that societies that increase their ability to adapt tend to substitute purely vertical and domestic trust for

a lateral and ever more abstract form,[7] until people reach a level of trust in institutions[8] or in what are termed expert systems.[9] Trust is not, however, merely a psychological occurrence. At an institutional level, trust is created when the future is made more predictable. As societies become more and more complex they become unable to rely on personal/individual trust, and must use the institutional mechanisms that make trust possible.[10]

It is likely that the security value that the law is called on to carry out –the other side of trust-, is now referred to as *governance*, a term that is used in political texts to refer to the extent to which a given society is able to create social order and submit the conduct of its members to secure expectations, which are in turn guaranteed by institutions. Governance is thus the institutional and political expression of the old value of judicial security. When we say that a society possesses low levels of governance, we mean that its collective institutions –including the normative system- lack effective force.

Sociology has also highlighted this link between justice and law on the one hand, and security on the other.

The state apparatus's objective in the administration of justice is to ensure that the expectations that arise from a country's laws are dealt with in a predictable fashion, which diminishes the problems of social life. From this perspective, there is a very narrow and traditional relationship between justice and security. Social life is threatened by a twofold predicament (which is to say that decisions made by members of social life can be potentially multiple) and reduces this complexity via laws that ensure normative expectations through the judicial administration apparatus. Following Luhmann, the law is a mechanism for dealing with the fact that human beings have "expectations about expectations."[11] The law establishes expectations and guarantees, which are met when they are made immune to frustration. The modern State –the sub-legislative State, or rather social life subjected to the law or the rule of law- is characterized by this relationship. When this relationship fails, or rather, when the State apparatus is no longer able to meet the expectations that arise from the normative system, the State itself is in crisis. Without the stability and the guarantee that expectations will be met that are provided by the law, social life plunges into a state of disorder.

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[7] Putnam, R. *Making Democracy Work*: *Civic Tradition in Modern Italy*. Princeton: Princeton University Press, 1993.
[8] Luhmann, N. *Confianza.* Barcelona: Anthropos, 1996.
[9] Giddens, A. *The Consequences of Modernity.* London: Polity Press, 1990.
[10] North, D. *Instituciones, Cambio Social y Desempeño Económico.* Mexico: FCE, 1990.
[11] A social actor, suggests Luhmann, formulates his expectations in the following way: I am ready to do as you want, on the condition that you do what I want and vice versa. How to resolve this circle of expectations, which leads to the paralysis of social life? Cf. Luhmann, N. *Introducción a la Teoría de Sistemas*, Barcelona: Anthropos, 1996.

This is the most abstract as well as most basic relationship that can be observed between laws, justice systems and security, and it is related to a relationship that has often been left out of analyses of the region, where focus has instead been placed on other values or aspects of the legal system which, from a sociological and political perspective, are secondary to security. There are values, however, that are morally and politically more important than security –namely human rights- but they can only be attained from a sociological and political perspective if, and only if, this abstract and neutral value known as security is achieved, as a guarantee of the expectations of social life or the capacity of government.

The connections between the workings of the justice and security apparatus, which is to be understood as a guarantee that expectations will be met –a basic principal on which the concept of human security should be established- are multiple. The following is a brief list of some of the most important ones:

a) Judicial reform processes and the achievement of judicial security.

There is a problematic relationship between judicial reform and judicial security, which tends to lend a certain paradox. Even though reforms are designed to increase security on multiple levels, they decrease it when they are put into effect. In fact, a certain legal constructivism and a constitutional spirit that increases legislative contingency and obsolescence, thereby hindering the creation of equilibrium between tradition and innovation, frequently accompany judicial reform processes. Players within the system –especially judges- become more and more susceptible to the political system, which leads to a loss of relative independence. The difficulty of professional formation –linked to weaknesses within academic communities- hampers quick adaptation to change and distorts the legitimacy and efficacy of the new laws, once more creating the need for change and obstructing trust from being established. Thus there is a risk that legal reform creates a spiral of problems and insecurity if it is not accompanied by a convergence of interests that ensure the mid-term stability of the new structure.

It follows that judicial reform should not be seen as a permanent state of justice systems, but rather as processes delimited in time with precise, strategically outlined objectives. This is why it is important to move from the stage of government and management reform –which is the stage at which most of the region's countries are presently located- to the stage of government and management of judicial policy –where importance is wrested from re-introductory changes.

Without doubting that such measures are possible, there is a need to bring the reform processes that are currently being carried out, which are already overstretched especially in more sensitive areas, to a timely close so that justice systems can effectively guarantee expectations, i.e.:

- The creation and maintenance of an authentic jurisdictional constitution;
- Extensive access to judicial services; and,
- Procedural systems that guarantee the basic principals of due process.

b) ***Legal security functions as an ability of the judicial system to provide information.***

The main public dimension of litigation (which contributes to making more predictable decisions and thus creates social order) is constituted by the information produced by the decisions that are emitted by the justice system. Greater access to information leads to greater security in terms of what is understood as the guarantee of expectations. This information includes the content of the normative system, its limitations, and the way in which the law is provided by judges. This data is used by plaintiffs to determine their obligations and opportunities in a given conflict and puts them in a better position in terms of deciding whether or not to invest in a legal action. Published information regarding precedents tends to discourage strategic conduct and favors settlements, which diminishes the pressure placed on the justice system. Certainly, the public assets formed by such precedence possess a value and rate of depreciation that tend to be directly related to the obsolescence status of the laws. A high level of contingency within the body of laws greatly diminishes the value of a set of precedence and confers a greater value to the political ambit and assorted interest groups. This establishes that the justice system should, consistent with its characteristics, be less exposed to the frequent mistakes of the political ambit. It is for this reason that legal systems, which show a high degree of legislative obsolescence –such as those that are observed in various parts of Latin America-, assign less importance to precedence.

But even if the public nature of such precedents could lead to a so-called “free rider” conflict, in practice this does not occur. The reasons for this are various, the most common being that judges are in the midst of a multiple cooperative adjustment between themselves, in a game of give and take. And in particular, if the precedence is devalued, the rate of litigation increases, so threatening the private interests of judges.

However, it may be the case that judges have reasons to not fail to create precedence and that the judicial system in its entirety does not believe or downgrades them very quickly, thus producing a loss of judicial wealth. Of course, this takes place when the legislative obsolescence rate is very high, a situation which, for its part, depends on the defects of the political ambit (such as a high level of susceptibility to interest groups) or on the traits of the political system (namely, a transition system should present a greater degree of constructivism that transfers the making of laws from judges to the legislative process). This also contributes to a low level of precedence, and the presence of incentives that induce judges towards equitable rulings. Equitable rulings –as opposed to rulings that confer value on precedence- may be easier for judges (because they may require less time than a ruling of annulment); or they may produce greater profitability, allowing judges to influence the political ambit or exchange favors with the plaintiffs.

The level of security provided by the justice administration system depends on the degree of precedence it is able to produce. When such precedence is not created, uncertainty starts to spread and people place their expectations in the political system.

An increase in the application of annulment and constitutional justice can contribute to the security factor throughout the region. In general, and from an indirect perspective, programs aimed at improving the availability and use of resources by the justice system tend to eliminate incentives for a more equitable application of justice (by reducing the deficiency that stimulates unfounded decisions) while improving conditions that bring about precedence. An additional contribution is made by the formal education that judges receive and the different institutional means that are able to guarantee the internal and external independence of those responsible for jurisdiction.

c) Legal certainty and legislative obsolescence.

It is practically a universally established truth that a legal system that is overly subject to trends in civil society and characterized by inordinate regulatory change is hardly predictable, and therefore, uncertain. From a conceptual perspective, high levels of legislative obsolescence produce insecurity because they lead to a decline in the regulatory system's predictability. As we have suggested, legislative obsolescence also diminishes the production of precedents, and leads to a shift in focus on the creation and modification of legislation that may be initiated by judges. This tends to foster the influence of pressure groups and accentuates flaws of the political system. (The government or political groups may be tempted to

grant privileges to increase their short-term gains). Legislative obsolescence also signals flaws in the adoption of governmental decisions as a result of the influence of pressure groups (preventing a government from attending to universal interests of all citizens as expected from a political system). Such decisions may also have a high margin of error and require frequent corrections. One factor in the area of legal certainty that is frequently overlooked is the existence of true tacit agreements between pressure groups and the members of the political system, which stem from a lack of regulation or transparency in financing political activity.

d) ***Legal certainty and legal professions***

The characteristics of legal professions also influence regulatory system predictability. It is evident that the legal professions acquire paramount importance in a legalistic society. Professions are characterized by operating in accordance with a certain model of conduct or they possess a certain disciplinary matrix. This disciplinary matrix reduces complexity, stabilizes decisions and, as a result, increases certainty. Legal culture –which is understood as the existence of this matrix and the capacity to condition members of the profession to the socially acceptable pattern of conduct- is an indirect factor that affects the degree of legal certainty. The most obvious example of the influence of culture on legal professions can be observed in regulatory quality. Poor quality regulations -those that leave room for discretionary decisions with a subsequent deterioration in predictability- are often the product of a deficient professional culture.

There is an indirect relationship between the levels and quality of legal education and the justice system's ability to produce certainty. In recent years the Americas have experienced a significant increase in law schools and legal professions. Diversity in higher education systems prevents the existence of mechanisms that impart common objectives while respecting curricular autonomy. A system that accredits or assesses the quality of legal education - to bring it in line with objectives of an improved justice system - is one of the tasks still pending in the region.

e) Legal certainty and the attorney's market

Experience has shown that the legal profession can be expected to diversify in response to increased levels of wealth and social complexity. In the near future, we will have to refer to legal professions, in the plural, instead of the legal profession, in the singular. In recent years we have seen the emergence of formal education for judges, and the high contingency that characterizes

the legal system is likely to generate new legal professions. Moreover, the forms of exercising the legal profession have changed and will be inclined to moderate the competitiveness that produces such a great number of attorneys. The changes in the exercise of the legal profession originate in modernization of society, with its increased complexity and increased litigation that help diversify the profession.

This situation has a problematic relation to the issue of competition and with issues associated with professional ethics. Professional ethics, understood as the existence of a common guideline for members of the same profession, contributes to the predictability of the system as a whole.

f) ***Legal certainty, governance and democracy***

The capacity to govern -but not necessarily the form of government- is another important variable in legal certainty. Effective government is a necessary but not sufficient requirement for the rule of law and is the most solid indicator of a stable and predictable regulatory system. Effective government is, thus, a necessary requirement for achieving certainty. Knowing who governs and by what rules decisions are made -regardless of the content of the decisions- is a fundamental (necessary but not sufficient) element of legal certainty, as we have described it. Clearly, this is the most basic level of certainty. Social actors as a whole aspire, at the very least, to overcome the Hobbesian situation that, for lack of effectual government, makes "life poor, sad, solitary, and short."

The quality of the political system is closely associated with this variable. From the perspective of legal certainty, several factors determine the quality of a political system. These include: a clear identification of decision-making centers, standardized procedures for adopting decisions, clear rules to guide the decision-making process, and an effective system for monitoring the content of those decisions through a contentious administrative or constitutional supervisory system.

It should, however, be noted that the presence of all these factors does not necessarily imply a relationship between the democratic system and legal certainty. Legal certainty may be visualized as a value that is neutral at best. "Good government" is therefore not the same as "governance," though both are associated with the concept of certainty in various forms and varying degrees of intensity.

Democracy can, of course, affect growth conditions by creating a context that damages security as a neutral value. Democracy tends to accentuate the majority's disposition to transfer wealth from the groups that possess the greatest economic power to those that have the least, thus diminishing the environment of incentives for investment and growth. The political system can also emphasize the influence of special interest groups that tend to the foster redistribution of wealth for their own benefit.

A non-democratic government is not necessarily counter to the protection of property and economic freedom, but it is important to note that a dictatorship is a high-risk political investment because, just as it fosters the assumptions of investment and growth, it can also foster oligarchic forms counter to these assumptions.

A careful review reveals that the balance is tipped in favor of the democratic form of government, which is the equivalent of effective government, for fostering economic growth. Democracy favors checks on power and tests governmental authority. In short, experience has shown that economic growth fosters a craving for public freedom.[12] (See "For the relation between government, good government and economic growth.")

[12] Barro, R. *Determinants of economic growth. A cross country empirical study,* Cambridge, MA: MIT Press, 1997.

(III)
Justice, Certainty and the Distribution of Social Commodities

The ideal of the welfare state –which is not always the reality-, established another relationship between justice and certainty. In the modern welfare state, certainty is no longer viewed as an assurance that expectations will be satisfied. The demand is now for the State to free citizens from fear of poverty by guaranteeing equal levels of well being, which are expressed as rights and as belonging to all members of a political community. The welfare state is therefore not only a social value (satisfied by the assurance of expectations regardless of what these may be), but also a substantial value, expressed in the old value of what we might call distribution justice.

Guaranteeing a set of social commodities in the form of rights establishes an association between justice and welfare. The achievement of welfare is no longer a problem of efficiency related to the development of the economic system, but a matter of justice that is transferred within the legal system. This tends to introduce serious problems related to judicial management as the justice systems are called upon to resolve problems from the perspective of rights that concern public policy or efficiency and inevitably presume decisions in a climate of scarcity. In addition, the judicial administrative system runs the risk of exposure to demands that neither the system nor the State are capable of satisfying. This situation may cause the regional justice administrative system to become the functional equivalent of the welfare state, and judicial debate may replace political discussion in the region. When justice administrative system is overburdened with demands, its legitimacy is affected. This is accompanied by a diminished ability to satisfy the most basic demand of all: to ensure the expectations of citizens in social interrelationship.

In Latin America it is increasingly common to observe an incongruous collection of social and economic processes. In the 1980s, countries throughout the region began to abandon the construction of the welfare state, favoring reforms that were guided by monetary concerns. The idea was that an environment of adequate economic incentives would improve welfare. As a result, the production of public goods was transferred to the private sector and the economic system. At the same time, the political system turned away from the problem of the distribution of wealth in order to focus on citizens' most immediate demands. The crisis of representation led political parties and groups to cease to develop policy. This entire process was accompanied by a stronger, more prominent discourse on rights.

As a result, countries run the risk of recasting the justice administration system as the venue in which old legal actions against the welfare state are disputed in the form of rights and, to use the language of rights, used as the venue for

political debate. Instead of directing demands for social welfare to the political system, citizens undertake legal actions, employing the language of law, and exert pressure upon the justice system. The result has been an increasing tendency to view social and political demands as legal issues.

There are a number of issues that, from the point of view of institutional design, should be approached from this perspective:

a) The issue of the effectiveness of fundamental rights is, needless to say, an important part of this area. As is well known, the classic view of fundamental rights is that the individual may demand that the State meet his needs in terms of those rights. Such is the tradition common to United States federal law. The continental European tradition, whose influence is extensive in the Americas, upholds the horizontal effectiveness of fundamental rights. Thus, assets that protect fundamental rights may be claimed or demanded of other individuals, all of which has led to a broader interpretation of the concept of constitutional jurisdiction. The constitutional incorporation of rights, a concept that is familiar to all, results from the horizontality with which fundamental rights are recognized today. It is also an expression of the current displacement of social demands. This situation may unsettle institutional design and the judicial weight of rights in the region.

b) Closely associated with the previous problem is the issue of direct effectiveness of fundamental rights, which has produced dysfunctional institutional practices that merit examination. These range from the direct association between judges and the constitution (and consequent disassociation from law) to the broad administrative supervision authority that judges enjoy. (The case that best exemplifies this situation is the nullity of public law in Chile).

c) The situations described above produce certain general alterations in the region's institutional system, especially in the area of constitutional justice, which should be reviewed. The growing demand for rights may jeopardize democratic force, and may undermine the political sphere, resulting in the transfer of demands to the judicial institutions.

(IV)
Justice and Certainty as Risk Management Associated with Decisions

Sociology, which has described the above situation in classic terms in the works of Simmel and Weber, has detected the existence of a new phenomenon in modern industrial societies: the *society of risk*. In the society of risk, the danger no longer stems from the failure of decisions to adhere to rules. Rather, *the decisions themselves are in a great measure the source of danger*. In somewhat traditional societies (as Latin American societies continue to be to a certain extent.) problems tend to be *problems of order*, or problems associated with determining how to submit decisions to rules. However, in the modern society of risk, a new problem arises: how to distribute the consequences of decisions that are made in conformance with the rules. As has been suggested, we need protection against risks (that is, against the consequence of our decisions); but also, inevitably, we need to take risks (that is, make decisions again and again without being able to calculate all the consequences of those decisions).

As described by Beck and Giddens, the society of risk, a concept developed in post-industrial societies, is an analytical ideal that is never fully present in any society, but that, paradoxically, tends to appear in all societies.

Though nearly all Latin American societies are far from being post-industrial societies, or societies of risk in the strict sense of the term, it is likely that a good number of them present problems that are more closely related to order than to risk.

Nevertheless, due to the uncertainty of life today, the expansive conditions of modernization subject all societies to some problems of risk, particularly problems related to what has been called "manufactured risk." This term refers to the risk created by our capacity to intervene in the world and the decisions associated with this intervention. Problems of sustainable development, the environment, and levels of activity are among the clearest examples of fabricated risk.

A cursory analysis of some of the judicial and legal changes that result from the society of risk follows:

a) Civil responsibility systems as a key element in risk management.
A system of responsibility determines who will bear the cost of accidents. In other words, it determines the cost of the foreseen or unforeseen consequences of human actions. Under an Achillean system of responsibility, the cost of accidents falls to the victims, unless they can prove that the damage was caused as a result of the guilt or negligence of a third party. Experience has shown that the Achillean system does not sit

well with the demands for security that are presented in a society of risk. Consumer rights and manufacturer responsibility, professional responsibility and the responsibility derived from the mass media point to the need to establish systems that distribute the costs of accidents more efficiently from the perspective of social welfare criteria. Reparation of non-financial damages poses serious conceptual problems in systems that are based on the continental European model. All of these elements should be assessed and analyzed in light of the growing incidence of the society of risk.

b) Environmental problems as emblematic problems of the society of risk.

In the 19th century, systems of civil responsibility were extremely limited. At present the institutional arena that is currently responsible for managing risk (that is, for determining who bears responsibility for the costs of decisions) is being changed and expanded. In particular, risks associated with globalization present a problem that national rights do not address. We refer to the problem of global governance, which entails how countries that do not make global decisions can influence management of the consequences of those decisions. The existence of international public assets and global risks presents problems for international law that the Inter American system should begin to address.