Chapter 6

Courts On Screen: E–Government and the Increase of Judicial Transparency

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ABSTRACT

Opacity may be the key word to describe how judicial work is done. Yet there has been a plea for change, as transparency has been demanded as a rule for governmental issues, judicial work included. The challenge lies in getting there, and e-government may be today a popular trend that will get us there. Indeed, media convergence, the use of social media, and live broadcasting on the web repaginate an old debate on the presence of cameras in the courtrooms and places it on the e-government level. Rephrased as courts on screen, the debate challenges the secrecy of judicial deliberations and makes a call for sunshine in the courtroom. The Brazilian experience of TV Justiça and its recent arrival on YouTube and on Twitter has pushed further the debate over the impact of courts’ sessions live broadcasting and is here examined as a case study for the increase of judicial transparency.

INTRODUCTION

Opacity may be the key word to explain how judicial work is done. A change is pleaded by one and everyone: we all want transparency as a rule for governmental issues, judicial work included.

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which has been up to now the rule in the majority of countries – and brings up a call for sunshine in the courtroom. It comes thus as no surprise that in March 2010 a New York Times editorial on media coverage of Federal Court proceedings arguing that televising Supreme Court proceedings would be good for democracy, expressed that “[c]ameras in the court would allow Americans to see for themselves how an extremely powerful part of their government works. They would also allow voters to hold presidents accountable for the quality of justices they nominate. Right now, we see the justices during their confirmation hearings and rarely after that”. In this reverberation of a North American congressional debate at least a decade old, transparency is here undoubtedly seen as the anteroom for accountability.

Yet, this is not a North American debate. As a matter of fact, this is a cosmopolitan discussion enhanced by a judicial protagonism that came along with the judicialization of politics (Vallinder and Tate, 1995). As a consequence, other experiences may be of further interest as they shed light on the debate from different perspectives. From a theoretical point of view, one may thus look at the Great Britain debate organized by the Department for Constitutional Affairs to strengthen its comprehension on the matter. Or, one may choose to examine the uniqueness of the Brazilian experience and try to establish what it means for transparency and for the development of e-government. The latter is the proposed approach here. In fact, after reviewing the correspondent literature, it is here proposed a close look at TV Justiça – the official Brazilian court TV – assuming that an examination of its trajectory may be of great help to understand the renewal of the debate over e-governance and its impact on judicial transparency. An increasing demand for accountability has contributed to the transformation of judicial work and definitely, in the Brazilian case, as TV Justiça provides for greater transparency, it has deeply contributed to the perceived change. Consequently, this is the exact intent of the analysis here proposed: to articulate e-government and judicial transparency in order to establish a sense for the increasing use of TV and web broadcasting of judicial life. After reviewing the literature on cameras in the courtrooms, the text takes a close look at the Brazilian experience of TV Justiça as it may be noted as an important case study to understand what lies ahead as one tinkers with judicial transparency and e-government.

BACKGROUND

The debate over the presence of cameras in the courtrooms is an old one and much has been said about it. On the one hand, some argue that cameras are disruptive of the judiciary scenery while on the other hand, others argue that it may increase judicial transparency and contribute to a greater accountability of judicial work. As described by Erskine (2006) in his analysis of the legality of live coverage on juror deliberations, cameras in a courtroom set out a conflict “between two fundamental constitutional rights: the right of an impartial jury and that of freedom of the press” (p. 712). In other words, “[t]he conflict between the media and the courts over cameras in the court centers on the First Amendment right of a free press versus the Sixth Amendment right to a fair trial. However, the specific arguments by media and the judiciary are usually framed differently. The judiciary argues that media coverage is disruptive to trial proceedings, the camera’s presence may be intimidating to witnesses and attorneys may play to the camera. The media argue that camera access is vital to their role in a democracy; it provides transparency to the judicial process, enhances the credibility of the courts by taking the mystery out of the judicial process and provides a societal good by being a surrogate for the public” (Martínez, 2009, p. 4). In another paper, Martínez (2010) draws a similar case as he points out that: “[t]he televising of court proceedings, which a powerful minority of judges ironically opposes, confers