Judicial Accountability
Ethics and Discipline

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Introduction

The aim of this paper is to analyse judicial accountability, its forms, limits and challenges. It offers an analysis of the mechanisms of judicial removal and discipline in comparative perspectives. Special attention is paid to public accountability of judges - its limits and its risks. The article also examines the models of accountability and discusses the recent trend of increasing popular pressures on the courts.[1] Finally the paper will examine the guidelines for standards of judicial conduct.

Models of accountability

No institution can operate without being answerable to society. The judiciary must also be accountable. Judicial independence cannot be maintained without judicial accountability for failure, errors or misconduct.[2] There are many forms of judicial accountability. They can be classified into a number of catergories: legal accountability, public accountability, and informal and social controls. The first category includes the disciplinary supervision over judges, appellate review of their decisions, and their civil and criminal liability. The second category, public accountability, includes the controls over judges exercised by parliament or the legislative body existing in each society, the executive, the general press and pressure groups. The third category includes the social and professional controls exercised informally and often in private, away from the public gaze. Such informal controls and professional pressures are exerted on judges by their judicial bretheren and superiors, and by their professional colleagues.[3]

The classification of the forms of judicial accountability can also be along the lines suggested by Professor Cappelletti.[4] He distinguishes between three models of judicial accountability, the repressive or

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dependency model, which rests the power of controlling judges in the political branches of the government; the autonomous corporative model, which leaves the function of controlling judges in the exclusive hands of the judiciary itself; and the responsive consumer-oriented model, which is a mixed model, neither exclusively judicial nor solely in the hands of the political branches. Professor Cappelletti advocates the responsive-consumer oriented model. I tend to support Professor Cappelletti. Referring to the theses I have already advanced elsewhere, the thesis of internal judicial independence[5] (the judge's independence vis-à-vis his colleagues and superiors) would require the rejection of the exclusive judicial model, the autonomous model. Internal judicial independence is promoted if hierarchical patterns in the judiciary are moderated by a carefully formulated participation of representatives of other branches and the public in general in the process of exercising judicial accountability. Likewise, the principle of fair reflection of society[6] will support a measure of public participation in the process of judicial accountability. The principle of judicial independence in all its aspects, substantive, individual and collective, ought to lead to the conclusion that the repressive model[7] must be rejected.

Limits on accountability

The formal mechanisms of accountability of judges are subject to legal restraints such as judicial immunity from criminal and civil liability for acts or omissions in the discharge of the official function, by the sub judice rule[8] and other doctrines of contempt of court, and by the doctrine of res judicata.[9]

As Professor Andersson wrote,[10] there has been 'a worldwide trend toward subjecting judges to scrutiny to improve judicial conduct and performance'. Among the developments in this direction is the recent (1972-1979) abandonment in France of the old principle of judicial irresponsibility, and the more recent legislation in such diverse countries as the Soviet Union (1981), the Federal Republic of Germany,[11] and the English Contempt of Court Act 1981 following the Sunday Times case in the House of Lords and the European Court of Human Rights.[12] The restriction

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of immunities and the elimination of limitations on judicial accountability was coupled with the introduction of alternative procedures for the protection of judicial independence. Thus the restriction of judicial immunity is sometimes counterbalanced by the introduction of state liability for the act, either exclusive, concurrent, or vicarious.[13]

I share the view of Professor Cappelletti that the limits on judicial accountability should be minimised by such reforms that increase judicial accountability and at the same time take the appropriate measures to safeguard judicial independence.

Popular pressures versus judicial independence

Public accountability of the courts and judges is a necessary derivative of the value of public onfidence in the court. The courts can perform their function as an institution to resolve disputes in society only if the process of resolving the dispute is fair, efficient, expedient and not unreasonably costly. Public confidence in the court is enhanced by numerous principles and practices, such as the principle that court proceedings must be conducted in open court, and the practice of stating reasons for the decision. The importance of public confidence in the court is well reflected in the oft quoted slogan that: 'Justice must not only be done, but must also be seen to be done'. It is also reflected in the rather strict tests applied for self-disqualification for bias. The test does not require that bias has actually influenced the judge, but rather that it is likely that it will influence the judge. The traditions of the Bench go even further than the strict requirement of the law of self-disqualification.

The press serves a significant role in maintaining public confidence in courts and judges, by reporting what is going on in the courts. Courts and judges should not be immune to fair criticism so long as it is done in good faith and in good taste. Judges should use very sparingly the extreme measure of contempt of court, where it exists, to suppress criticism of the courts. The test should be strict as laid down by the European Court of Human Rights in the Sunday Times case concerning the Thalidomide action.[14]

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The scope and nature of press reporting and critical comment on judges and judicial decisions varies from one country to the other.[15] Among groups of nations it is more widespread and outspoken in the Western countries than in the Third World countries or the Communist bloc. Another source of pressure on judges are the pressure groups of particular interests which exert influence on judges in cases concerning them. As an illustration of the influence of particular groups, one can mention the long and historic relationship of friction and tension between the judiciary and trade unions in Great Britain.[16] A recent development is the phenomenon of court watchers or court observers who closely scrutinise judicial decisions in a specific area of interest to the pressure groups (such as law and order, women's rights, morality issues), and publish an individual record of each judge's performance in those areas. This practice is quite common in certain areas in the United States, particularly where judges are elected.

It is important to be aware of the dangers which lie in undue popular pressures on judges. If every intemperate statement that a judge has made is tranformed into a heated public controversy; if every isolated incident of foolish or unwise conduct of a judge is made a subject of an inquiry so as to soothe pupular pressures, the position of the judge will be undermined. Excessive popular pressure and irresponsible journalism, hungry for sensational pieces, might put the judges in an unbearable position and is likely to threaten the independence of the judges who very often have to act against popular wishes and to protect dissenters and members of minority groups.

Evidently, there is a continuous tension between judicial independence and public accountability of judges in a democracy.[17] This tension should be reconciled by the exercise of wisdom and good judgment so that the proper balance between these very important principles be maintained.

The judiciary as an institution, and individual judges in many countries, have been subjected to increased public criticism in recent years.[18] The increasing popular pressure on judges creates continuous tension between judicial independence and impartiality and public accountability of judges in a democracy.[19] Excessive popular pressure on judges, like too facile procedures and too malleable standards for judicial removal and discipline, might have a chilling effect on judicial

independence.[20] The tension between public accountability and judicial independence should be resolved by a careful exercise of judgment in order that the proper balance between these very important values be maintained.[21]

It must be emphasised that it is not only journalistic pressure and criticism which can endanger judicial independence. Accountability to political pressures of the modern state may at times bring judges to the centre of political controversy. Political criticism of judges is usually voiced in connection with cases having political overtones. An example from West Germany will illustrate this point. In the spring of 1981, 147 leftist demonstrators were arrested in the city of Nurenburg. The arrest orders had been signed by certain judges. This triggered sharp criticism, especially from the leftist parties and media. The interesting aspect of this issue was that 16 other judges publicly condemned their colleagues' actions.

Effective public scrutiny

Political leaders, academic critics and press writers should be aware of the dangers which excessive public pressure poses to judicial independence and impartiality. Moreover, awareness should mainly lead to restrained style, but not to interfere with the effectiveness of public scrutiny of judges and courts. I believe that public pressure on judges, even at a relatively intense level, is to be welcomed. The past judicial record in many countries suggests a high degree of isolation and insufficient responsiveness to social change. Continued public pressure will counterbalance this prevalent tendency among judges. The social price which society may have to pay as a result of a chilling effect on judicial independence and impartiality is marginal and will be balanced by the social benefit which will accrue from a judiciary which is more responsive to social change and which will enjoy the confidence of all sections of the public. Moreover, one may dispute whether the exposure of judges to public opinion through the normal means of communication, such as press articles, demonstrations or parliamentary questions and debates can at all be viewed with a hostile eye in terms of social cost-benefit analysis or value assessment.

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Public criticism should be directed at all aspects of the administration of justice, including judicial decisionmaking, judicial conduct, judicial appointments, court procedure and court management.

The public criticism of courts is part of the general trend of increased public pressure on all social and govermental institutions in an open society. Still, the public has more confidence in the courts than in other government institutions. This is illustrated, inter alia, by the resort to courts to solve social problems which other institutions have failed or refused to solve. The increasing recourse to the law has given rise to some concern due to the law explosion and to the delay and congestion in the courts. However, from the point of view of public confidence in the courts, this recourse to the law for resolving important questions is indicative of the high degree of confidence that the courts enjoy in society. This observation is true in most countries.[22]

Restricting the executive role

An important proposition that I wish to submit here is that the executive may participate in the discipline of judges, but only in referring complaints against judges or in the initiation of disciplinary proceedings, not in the adjudication of such complaints. The power to discipline or remove a judge must rest with an institution which is independent of the executive, or it may be vested in parliament. Executive control over such matters is liable to bring about interference with the personal independence of the judges. In Professor Cappelletti's terminology such a practice is a 'repressive model', and is objectionable. This proposition is accepted in most countries.[23]

In a number of countries no executive input at all is allowed with regard to the discipline of the judiciary. I maintain, however, that in order to ensure the independence of the judiciary, it is only necessary to [illegible]

the removal of such control is not imperative though, it is, of course, very desirable.

The transnational jurisprudence on judicial independence which has emerged in recent years emphasises the importance of restricting the

executive role in judicial discipline and removal. The International Bar Association's Code of Minimum Standards on Judicial Independence (§ 4(a)) expressly provides that -

> 'the Executive may participate in the discipline of judges only in referring complaints against judges, or in the initiation of disciplinary proceedings, but not in the adjudication of such matters. The power to discipline or remove a judge must be vested in an institution which is independent of the Executive'.

The IBA standards register a strong preference for entrusting the power of removal to a judicial tribunal (§ 4(b)), but recognises the legitimacy of vesting such power in the legislature, preferably upon a recommendation of a judicial commission (§ 4(c)). The preference of a judicial tribunal is also supported by the Montreal Declaration, which lays down similar principles to those of the IBA Montreal Declaration. § § 2.33 allows legislative discipline and removal of judges preferably upon a recommendation of a predominantly judicial body, but prefers that the power of discipline and removal of judges be exercised by 'a court or a board predominantly composed of members of the judiciary and selected by the judiciary' (§ 2.33).

The Tokyo Principles also express the view that legislative removal is 'unsuitable', and propose that the procedures for discipline and removal of judge should be 'under the control of the senior judges of the particular society' (§ 11(d)(i)).

<u>Removal and discipline</u>

The international standards call for ensuring procedural fairness, including the right of hearing,[24] a preliminary examination,[25] and a provision for hearing in camera,[26] and most importantly, a right of appeal before a court of law.[27]

These essential requirements are invariably mentioned by the IBA standards, The Montreal Declaration and Tokyo Principles.[28]

The International standards also call for the exercise of judicial removal and discipline upon previously established standards of conduct and clearly states grounds for removal.[29]

The majority of countries have a set list of grounds on which a transgressing judge can be removed from office. These grounds are quite varied, and stray from those which have been suggested in the international standards which include criminality, 'gross or repeated neglect or physical or mental incapacity.'[30] The grounds for removal quite frequently include incompetence, which should be regretted, as it could be misused.

A small number of countries specifically exclude the ground of incompetence as a reason for dismissal or limit the grounds to those of illness and infirmity.[32] Some states have the theoretical power to carry out removal proceedings but do not in practice ever use them.[33] These are, however, a small minority.

Some comparative observations

The power of removal and discipline is sometimes vested in the legislature[34] (by address or by impeachment); sometimes it is vested in a judicial authority or a judicial tribunal[35] (such as the Judicial Disqualification Commission, or a Judicial Council), or in the Executive acting upon a judicial recommendation. There are jurisdictions where no special procedure exists for judicial discipline and removal,[36] but this is rare.

The power of initiation of disciplinary measures against judges is no less important than the power of removal and discipline as it is often only on the recommendation of the initiator of proceedings that disciplinary action will be executed. It is therefore a healthy sign that many states empower judicial councils or judges to initiate all or part of their various disciplinary proceedings.[37]

A number of countries, nevertheless, derogate the power to initiate proceedings to an executive organ or will reserve some of the power for the executive, generally by way of a parallel system of opening a disciplinary action against a judge.[38]

In many countries no disciplinary tribunal exists. Where one does, its composition is commonly determined by constitutional or statutory provision.[39] Alternatively, the judiciary may select its members[40] or they may be elected either from the ranks of the judiciary or the legislature.[41]

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It is rare for the executive to be involved in such tribunals and any involvement may well be limited to the selection of tribunal members rather than participation in the tribunal as members.[42]

Such disciplinary organs as do exist are almost invariably permanent. Many countries simply use Parliament as the tribunal and this naturally is a permanent institution fulfilling its disciplinary role as and when it is required.[43] An ad hoc or temporary tribunal is thus a rare exception,[44] and permanent tribunals are to be encouraged.[45]

A special procedure, preferably, in camera, and fixed according to statutory rules, is desirable to prevent a misuse of the powers that accord to the various organs of government to dispense disciplinary action against judges.[46] Many states follow such a pattern or similar,[47] but others regulate the proceedings according to a machinery already existing for regular offences or for administrative infringements. Some states regard the whole apparatus as on a footing with that used for disciplining civil servants or simply make no special rules for judicial investigation and prosecution.[48]

Guidelines for Judicial Ethics

Many judicial traditions and practices have been established and maintained to keep judges away from controversy and exclude them from involvement in unseemly matters which are considered to be injurious to the reputation and status of the judiciary. These traditions no doubt promote judicial prestige, dignity and integrity and ensure public confidence in the courts, but at the same time they tend to divorce the judges from the community. Court critics have often suggested that these strict rules of extra-judicial conduct are indications of conservatism.

Remoteness and isolation of judges renders them insufficiently sensitive to the sentiments of the community, which in turn has impact on their judicial decision-making. This was rightly criticized. It was said to result in judicial insensitivity, insulation and cause judges disassociation from life, which is then reflected in their decisions, as in sentences which are out of tune with community feelings, or decisions which do not correspond with the norms prevailing in their community.

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I believe that lawyers, including the academic lawyers, and the general public, perceive judges to be more isolated than they are in fact and perceive them as maintaining stricter standards of conduct than they in fact do. Sir Winston Churchill reflected this perception when he said in Parliament that "the judges have to maintain ... a far more rigorous standard than is required from any other class that I know of in the realm".[19]

The general rule should be that judges should behave in such a manner as to preserve the dignity and impartiality of their office. Apart from that, they should be involved in society in a variety of forms of activities which will ensure that they are not remote from the community they judge.

The central test for shaping judicial ethics should be public confidence in the judiciary in general, and in the individual judge in particular. The same test prevails in the determination whether or not to initiate disciplinary proceedings against aberrant judges. If the misconduct endangered or destroyed public confidence in the judge, discipline is called for, and in the most serious cases where such misconduct destroyed public confidence in the judge, he has to resign or be removed.

There is an ongoing debate as to the desirability of a written code of judicial conduct. Advocates of such a code point to the benefit of clear and definite guidelines for judicial conduct, avoiding misunderstanding and misinterpretation. Opponents argue that it is difficult to address all the numerous issues relative to judicial conduct in a code, and it normally remains in the more general level, which is of no meaningful help in the frequent cases of doubt.

In the Canadian context, there is the further problem of the need to respect federalism. In this debate I am inclined to support the written code of conduct which crystalizes the common consensus and guides the judges how to conduct themselves.

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Conclusion

In conclusion I wish to suggest that all forms of judicial discipline should be exercised with a view that judges must be accountable for misconduct which adversely affects public confidence in the court. But it must be exercised cautiously to avoid an undue chilling effect on judicial independence. A Judicial Code of Ethics must be developed so as to clarify standards of conduct, and promote judicial impartiality and integrity.

Methods and standards of accountability are strongly coloured by social climate and political environment. Incidents of judicial misconduct or worse judges' involvement in criminal conduct tend to create a climate of crisis. In such a climate public pressure mounts to develop mechanisms of judicial accountability which compromise judicial independence. Elsewhere I have analyzed The New South Wales Judicial Officers Act 1986, which suffers of this flaw.

The real challenge of society is to maintain that delicate balance between judicial accountability and judicial independence.

FOOTNOTES

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1. See infra.

2. Cf. generally, Cappelletti, 'Who Watches the Watchmen?' 31 Am J Comp L I (1983). See also Hearings before the US Senate Judiciary Committee, Subcommittee on Judicial Machinery and Constitution, 96th Congress, 1st session, May-June 1979.

3. Shetreet, Judges on Trial, at 226-268.

4. Cappelletti, supra note 2, at 54 et seq.

5. Shetreet, 'Judicial Independence: New Conceptual Dimensions and Contemporary Challenges', in Shetreet and Deschenes, Judicial Independence: The Contemporary Debate, 590, at 637-644.

6. Id, at pp. 434-435.

7. It is important to stress that it is our view that when we refer to the repressive model, in Professor Cappelletti's terminology, we must distinguish between the initiation of the procedure and the adjudication of disciplinary action against a judge. Thus, if the executive initiates the proceedings, which are adjudicated by a judicial tribunal, such mechanism should be defined as mixed, ie., responsive model.

8. The sub judice rule exists in many countries, particularly those following the common law tradition in a number of nations, however, there is no sub judice rule. In those countries, such as Finland and Sweden, press comment on pending cases is the rule of the day. There are also a few nations in which the sub judice rule is not a binding legal norm, but is provided in the rules and practice of good press ethics. This is the case in Norway, Italy, Bangladesh and the Netherlands. There are, however, some countries in which there are strict rules prohibiting such

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comments. This is the law in common law countries such as England and Canada, but such rule also exists sometimes in continental legal systems. In Austria, for instance, the law prohibits comments pending criminal cases and, in particular, discussion of the guilt or innocence of persons as long as no public trial has taken place or a verdict been promulgated.

In South Africa, a publication which 'tends to prejudice or interfere with the administration of justice in a pending proceeding' is an offence under the South African common law of contempt. In deciding whether there is a tendency to prejudice in a matter which is sub judice, it has been held that it does not matter that the publication is most unlikely to influence the judge who is to hear the trial. Generally a similar law exists in the United Kingdom and in Australia. In Israel, the sub judice rule has undergone a development toward greater flexibility and more freedom for press comment on pending trials.

In countries following the common law tradition, such as Israel, Canada or Australia, there is also a limit on public comment on the judges and courts generally. It is normally referred to as the law of contempt.

9. Cappelleti, supra note 2, at 11-14.

10. Anderson, 'Judicial Accountability: Scandinavia, California and the USA';, 28 Am J Comp L 393, (1980).

11. Cappelletti, supra note 2, at 9.

12. Id, at 30-32.

13. Cappelletti, supra note 2, at 33 ff.

14. See id at 32-32.

15. In the majority of the countries there is some sort of press coverage of the events within the courts. As could be expected, the press deals

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mostly with sensational criminal cases, or with cases dealing with bizarre issues, or cases in which public personalities are involved. In some of the developing nations, only grave criminal trials or extremely sensational cases are reported.

With regard to journalistic criticisms of the judiciary, there is a distinct difference between the so-called 'Western World' nations and the nations of the 'Third World'. In nations of the latter category, criticism is extremely rare. Thus, in Uganda, where it is reported that criticism is rare, there has recently been criticism in the press of the judiciary for the failure to impose sufficiently harsh sentences upon former members of the various security forces and intelligence units of Idi Amin's military regime. Otherwise, criticism has been non-existent.

In nations in which freedom of expression is allowed, criticism is only over decisions with political overtones or exceptional criminal trials. That is the situation, for instance, in Greece and Italy. In nations, where there is at present no freedom of speech, such as Bangladesh and Uruguay, there is, naturally, very little or no press criticism of court cases.

In the Western countries, with the exception of Finland, press criticism is a commonplace occurence. Thus, in the Netherlands, there is particular criticism in cases in which any section of the community expressed special interest. In Australia, criticism is very frequent and often very pointed.

In the Communist Bloc, the public acountability may be more direct in spite of lack of freedom of the press, because of the unique position of the people's court. See Cappelletti, supra note 6, at 25 ff.

16. Abel-Smith and Stevens, Lawyers and Courts, 308-0 (1976). See Shetreet 'On Assessing the Courts in Society', 10 Manitoba LJ 355, at 358 (1979); Shetreet supra note 3, at 300, 311; R Stevens, Law and Politics, 92-98 (1978).

17. Lord Hailsham, 'The Independence of the Judicial Process', 13 Israel L Rev 1, at 8-9 (1978).

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18. In the United States, a wide public debate was instigated in 1979 by the Brethren, B. Woodward and S. Armstrong. The Brethren: Inside the Supreme Court (1979) which contained intimate information of the inner workings of the Supreme Court. In 1980, Australia's Senator Gareth Evans introduced a motion on the apparent association with a business transaction of the then Chief Justice of Australia, Sir Garfield Barwick, in the course of an intense public controversy over Chief Justice Barwick's conduct. See Parl Deb, Sen (Aust.), 29 April 1980, pp. 1897-1943. In England, there have been numerous cases which attracted intense public attention and outspoken criticism, and judges have, on many occasions, been strongly criticised by the general press and political leaders. A large share of the criticism and adverse comments has been directed at Lord Denning. See Shetreet "On Assessing the Courts in Society", 10 Manitoba LJ, 355 at note 13-16 and text. A significant phenomenon which emerged in England in recent years is the marked increase of parliamentary motions against judges. Id n. 31-40 and text.

19. P. Nejelski, "Judging in a Democracy: The Tension of Popular Participation', 61 Judicature 166 (1977).

20. See Judge Irving Kaufman, "Chilling Judicial Independence", (1979) 88 Yale LJ 681. See also Lord Hailsham, (1978), supra note 233. See also Lord Hailsham's statement in his Riddel lecture: "If [judges] are constantly subjected to pressure... they will not be able to perform their duties impartially'. The Times, 25 May 1978, at 2, col 4.

21. Cf. Shetreet, "The Administration of Justice: Practical Problems, Value Conflicts and Changing Concepts;, (1979), 13 UBCL Rev 52 at 67.

22. On the increase of judicialisation, Shetreet, note 5, at pp. 593-594.

23. In Australia, although it has never been done, the action can be initiated by the Minister of Justice. The power to discipline or remove a judge, however, lies only with the Parliament. A similar system exists

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in South Africa, Canada and England. In Uganda, a disciplinary tribunal is established by the President on representation to him that a particular judge be removed form office for inability to perform the functions of office. This discipline is versted in the President acting in accordance with the advice of the Judicial Service Commission. Methods of judicial discipline based on judicial tribunals exist in Greece, Italy and Israel.

In England, the Lord Chancellor, who is also a member of the government apart from being a judge and Speaker of the House of Lords, is vested with the power of discipline and removal over judges of the lower courts (circuit judges) and certain judicial officers. This can be considered incompatible with judicial independence.

In Finland and Norway, no disciplinary actions can be brought against judges. They can only be brought to trial for committing crimes as any other citizen. The Minister of Justice can initiate these criminal proceedings, but it must be emphasised that his actions regarding judges are in the same manner as his actions regarding any other citizen.

In Austria, parties to a case can initiate disciplinary proceedings against judges, as can the President of the Court or other judges. The proceeding commences only after the decision of the disciplinary court, the composition of which is based upon law.

In Portugal, the Higher Council of Magistrature, which is independently responsible for the administration of the courts, initiates disciplinary action. Hearings are before the Council and its decision can be appealed before the Supreme Court of Justice.

In Ghana, where the matter of judicial discipline is regulated in the constitution, proceedings are initiated by the Judicial Council at the instance of the Chief Justice, who also decides on the composition of the tribunal.

24. IBA § 27.

25. Tokyo § 11 (d) (ii); Montreal § 2.32.

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26. IBA § 28; Tokyo § 11 (d) (ii); Montreal § 2.36.

27. Montreal § 2.37; Syracuse § 15.

28. See IBA §§ 27-32; Montreal 2.32-2.39; Tokyo § 11.

29. IBA §§ 29, 30.

30. IBA standards § 30; Montreal Declaration § 2.38; Syracuse Principles § 16; Tokly Principles § 11 (d).

31. Austria - "unsuitable" opinion of a given judge for consecutive years; Australia - 'proved misbehaviour and incapacity'; Bangladesh - 'incapability and gross misconduct'; Brazil - removal cannot be instigated for the 'nonpreparation of cases'; European Community - 'non-fulfillment of conditions or obligations of office'; Finland; France; Ghana - all have something akin to incompetence as a possible ground for removal; Italy - 'infirmity or misconduct'; Netherlands - 'neglect or the dignity of the office, official functions or official duties'; Nigeria - something akin to incompetence exists; Sweden - gross or wilful misconduct, criminal misconduct; 'includes incompetence'; Uganda - 'inability to perform functions of his office' (would be interpreted to include incompetence); United States - a minority of states allow removal for incompetence: In all of these states, fears were raised as to the possibility of removal on grounds of incompetence: India - 'only... on grounds of proved misbehaviour or incapacity'.

32. Belgium - 'serious and permanent infirmity'; Spain - illness; Japan - physical/mental hindrance. Though impeachment is reproted on grounds of gross violation or neglect of duty or misconduct damaging to judicial prestige.

33. Greece; Norway; South Africa; all claim this non-use of the power. In addition South Africa claims that the ground of incompetence is

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specifically excluded. United Kingdom; Australia; both claim that in the case of incompetence, an attempt would be made behind the scenes to convince the judge concerned to retire.

United States - has a range of grounds for removal in the state judiciaries, which covers almost all those mentioned previously:

45 states will remove due to physical or mental disability; 63 states will remove due to wilful and persistent failure in duties; 34 states will revove due to misconduct; 34 states will remove due to habitual intemperance; 27 states will remove due to conduct bringing the office into disrepute; 20 states will remove due to offences involving moral interpitude.
Other grounds include corruption, felony, participating in partisan politics or a failure to keep good time.

The second and possibly the third and fifth grounds could probably be construed by a hostile authority to include incompetence.

34. Ghana; United States - state court judges are removed by a variety of methods; 46 use impeachment, others resolution of a 2/3 majority of both houses or legislative address - the governor removing on a majority vote in the two houses. 28 states use more than one method. Federal judges also removed by impeachment. Japan - impeachment; Malta - none exist but it is thought that they could be constructed from the constitution. India - a similar system to Australia; South Africa: with removal, after an address by both houses, by order of the President. In addition Parliament has the power to regulate the removal and investigation procedures.

35. Italy - chief justice; European Community: Greece - presiding judges of certian appeal courts; Portugal - chief justice; South Africa - chief justices; Sweden - chief justice; Belgium - uses a mixed system, a chief justice carries out 'warnings', the chief justice of the court of appeal gives reprimands, the court of appeal carries out proceedings and the court of cassation is responsible for removing judges. Brazil -

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'corregedoria de justicia'; Japan; Spain; Italy - 'sezione disciplinare' of magistrates council.

36. Finland; Malta - no laws exist.

37. [illegible]

the President; Belgium - a chief justice, the court of appeal or a public prosecutor initiates proceedings; Brazil - the judicial council; Austria - disciplinary senate; France - a modified 'consel superieur de la Magistrature' initiates. Its usual president and vice president do not sit and a chief justice of the supreme court will sit instead as president; Ghana - chief justice and judical council; Greece - judges of higher courts initiate. To initiate proceedings againts appeal court judges there is a seven-man 'Highest Disciplinary', generale presso la corte di cassazione refers to the sezione disciplinaire; Japan - judicial conference of the court of the judge concerned or of a higher court; Nigeria - judges of lower courts can be disciplined by recommendation of the judicial service commission; Portugal - Higher Council of Magistrature; Spain - president of a given court; Sweden - chief justice or president of court of appeal; Uganda - judicial or president of court of appeal; Uganda - "COSUJJ' - the judicial council.

38. Australia - Removal upon an address, the only disciplinary measure for which a procedure exists, is effected by the Governor-in-Coucil or the Governor-General in the federal executive council; South Africa - state president removes on an address from both houses; Norway - minister of justice recommends removal; Nigeria - removal proceedings against a federal court judge can be stated by a two-thirds majority in the Assembly; Italy - minister of justice can initiate proceedings as an additional system; Uganda - for higher court judges the cabinet informs the President of grounds for an inquiry, carried out by a tribunal consisting of a president with at least two current or ex-judges; United Kingdom - address by both houses; India - both houses address the

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president with a 2/3 majority. Chad - Ministry of justice intitiates proceedings against a judge before a judicial tribunal.

39. Austria; Italy; Spain; Sweden; Uganda; United States - 24 states select tribunals on the basis of a constitutional amendment, 20 on the basis of statute. Membership is made up from laymen, lawyers and judges chosen respecitvely by state governor, state bar and supreme court. Laymen from majority in Iowa, New Mexico, Norht Dakota and Wisconsin. They are the largest single group on the tribunals in Florida, Illinois, Minnesota and Rhode Island. None participate in Delaware, Ohio, South Carolina and Utah.

40. Ghana - chief justice selects. Japan - judicial council selects five high court judges for a disciplinary court; Uruguay - judicial council. Israel - the Supreme Court selects members.

41. Greece - membership slected by lottery on an annual basis. Japan - a 14 member court elected equally from the two Houses, tries impeachment cases.

42. Uganda - the discipline of higher level judges to be conducted by a council selected by the President.

43. Examples include Austria; Australia; Bangladesh; Brazil; France; Ghana; Greece; Portugal; India.

44. Uganda; Israel.

45. IBA § 31 rule 36, Monteal standards rule 2.34 and Syracuse standards Article 14 generally.

46. Cf IBA § 27-28. Montreal § 2.34-2.37, Tokyo § 11 d) i), ii).

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47. Austria; Brazil; Ghana; Greece; Italy - by statute; Malta - s 98(3) constitution for judges, s 104(4) for magistrates, and investegatory procedure on the grounds of inability or misbehaviour; Netherlands; Portugal - Article 114 et seq, Law 85/77; Uganda - Article 85(5)(b) of constitution. India (Venugopal) (page 12) has such a procedure in theory, under the judges (Inquiry) Act 1967, and additional investigatory and disciplinary powers have been called for by the Law Commission. However, the former would appear to be redundant and the latter suggestion goes unheeded.

48. Australia; Bangladesh; Finland - same as for civil servants; though High Court of Impeachment will try Supreme Court judges; France as for civil servants; Norway; South Africa; Spain; Sweden - investigatory system as for civil servants: Uruguay defines the implementation of such proceedings as 'inaccordance with legal method'; Belgium; Japan.

49. 525 H.C. Deb. 1062-63 (Mar. 23, 1954).

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