



The relationship of political obligation and civil disobedience in correlation with the new democracies of 21st century socialism

La relación de la obligación política y la desobediencia civil en correlación con las nuevas democracias del socialismo del siglo XXI

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Abstract

The purpose of this paper is to make a brief comparative analysis of the contributions of the Political Relation of Law, in its relationship with society and its application with justice, as opposed to the positivized legal norm in the theory of the State, in the new South American democracies with the ideal of socialism of the XXI century, for that reason. Justice is the first virtue of social institutions, as truth

is of systems of thought. A theory, however attractive, eloquent and concise it may be, must be rejected or revised if it is not true; similarly, it does not matter that laws and institutions are orderly and efficient: if they are unjust they must be reformed or abolished. Each person possesses an inviolability founded on justice that not even the welfare of society as a whole can trample upon.

Resumen

El presente trabajo tiene por objeto hacer un breve análisis comparativo de los aportes que tiene la Relación Política del Derecho, en su relación con sociedad y su aplicación con la justicia, frente a la norma jurídica positivizada en la teoría del Estado, en las nuevas democracias sudamericanas con el ideal del socialismo del siglo XXI, por tal motivo. La justicia es la primera virtud de las instituciones sociales, como la verdad lo es de los sistemas de pensamiento. Una teoría, por muy atractiva, elocuente y concisa que sea, tiene que ser rechazada o revisada si no es verdadera; de igual modo, no importa que las leyes e instituciones estén ordenadas y sean eficientes: si son injustas han de ser reformadas o abolidas. Cada persona posee una inviolabilidad fundada en la justicia que ni siquiera el bienestar de la sociedad en conjunto puede atropellar.

Palabras clave/ Keywords

Law, Theory, Science, Justice, Law, Ius-Naturalism- Ius-Positivism. Civil Disobedience

Derecho, Teoría, Ciencia, Justicia, Ley, Ius-Naturalismo- Ius-Positivismo. Desobediencia Civil

Introduction

The Philosophy of Law is that part of legal science devoted to the examination and study of the supreme principles of Law; the scientific introduction of its speculative exposition, which dispenses with the law or positive law, but not with reality, persons and things, in their legal relations and situations, whose systematic generalization is intended. (Cabanellas, 2008) . It studies the philosophical foundations of Law as a normative and institutional order of human behavior with respect to its interaction in society.

As a concept, it was introduced between the end of the 18th century and the beginning of the 19th century, since previously, the studies and deepening in this matter had been focused on Natural Law, and its rationalization with respect to faith and reason. It arose at a time when societies were beginning to question the absolute submission that ruled before the Lex Divina, which was exercised directly by kings, and which consitua

Natural Law is that which, based on the permanent principles of what is just and what is unjust, it is admitted that nature discourses or inspires all men, as if unanimity among them were possible; for many it is equated in several senses with the Philosophy of Law. (Cabanellas, 2008) . It constituted a valid order by itself, who was in charge of regulating the whole community. It is not considered to be created by human beings, nor a product of history.

Subsequently, currents developed that affirmed that legal systems were, in contrast to the above, human creations that evolved and adjusted as society did. (Ballesteros, 1984) . In this way, the concept of natural law begins to lose some relevance and begins to give importance to other issues.

The term Theory of Law appears in the works of Emmanuel Kant, in 1797; Philosophy of Positive Law, in 1789 by Gustav Hugo; Philosophical Theory of Law in 1803 by Jakob Friedrich Fries; among many others.

Finally, after 1800 it appears simply as Philosophy of Law by a variety of authors such as W. T. Krug, Chr. Weiss or Karl Christian Friedrich Krause, but it had a real impact when in 1821, Georg W Hegel published the work Principles of the Philosophy of Law. (Atienza, 1895) .

The specific objects of study of the Philosophy of Law are to approach it as a phenomenon and as a science in turn; as a critical theory and as a philosophy of the legal experience, the law debates, and takes into account the social purposes that it effectively fulfills and the moral principles that inspire it.

It also deals with history, iusnaturalism and theories of justice; historical currents of legal-political philosophical thought that seek to reflect on various legal elements such as the state, law, government, justice, property, rights and the enforcement of a legal code by authority; what they are, why or even if they are necessary, what makes

a government legitimate, what rights and liberties it should protect and why, what form it should take and why, what obligations citizens have to a legitimate government (if any), and when they can legitimately overthrow it (if ever). In short, the study of human thinking about legal and political concepts, the philosophical foundation of human rights, and the relationship of law to psychology, sociology, anthropology, etc. (Hegel, 1988)

Its main issues are: legal ontology, axiology, existential legal philosophy and epistemology. Legal ontology refers to establishing who is the object to be philosophized about, what structure it should have and how it should be presented to society.

Legal epistemology reflects on the knowledge of law, whether it is possible, what form or structure it should have, how it should be presented in society, etc. Legal axiology tries to solve the problem that arises when it is not known on what basis the law should be based, highlighting and studying the fundamental values of law, in order to know which ones should prevail. The fundamental value is justice, so many authors define this case as the theory of justice.

Finally, existential legal philosophy is considered part of anthropology, and seeks to highlight the relationship between the legal reality and the being, determining that the law needs the latter for its realization since it encompasses the whole sense of law from its creation to its application. Another fundamental issue is the principle of causality, which establishes that everything has, as its name indicates, a reason for being or a cause. It may be a logical principle as a proposition, or simply a principle of such a proposition from which truths are derived from which various effects arise.

Materials and Methods

The main objective of the article is to recognize the Ius-Philosophical importance of the Theory of political obligation and its social impact in relation to justice and the positive norm, on the theory in the current law with the new democracies of the socialism of the XXI century. This objective was concretized in the following specific objectives: To know the importance of the Theory of Law and Legal Philosophy, towards a new society, from the point of view of law according to several authors. It is usually under discussion what is just and what is unjust. Men disagree about which principles should define the basic terms of their association. However, we can say that despite the disagreement each

has a conception of justice. That is, they understand the need to have a characteristic set of principles assigning basic rights and duties and determining what they consider to be the correct distribution of the burdens and benefits of social cooperation, and they are willing to affirm such principles. It seems natural then to think that the concept of justice is distinct from the different conceptions of justice and that it is specified by the role that these different sets of principles and conceptions have in common.

State theory studies the origin, evolution, structure, justification, functioning and purpose of the state. (UNAM, 2014) . It investigates the conditions presented by the state in terms of the organization of power or its form of political organization, and how this influences the life of society. Among those that study the nature of the state we find the sociological, the dualist, the institution, the formalist, the anti-formalist, among many others.

This theory comes from the development of public law in Germany in the early nineteenth century, being its major representative Herman Heller, who postulates using a criterion of truth that allows to describe and interpret in a valid way the political phenomena, establishing, thus, the universal principles that give it the character of science. In turn, this is divided into other theories, according to the nature of the state, the process of its configuration in the present time, etc. The purpose of the criterion is to lead to certainty, to a state of mind of evident conviction that we are in possession of the truth. The criterion of certainty is not unique, but has varied in the course of history. The criterion can be classified into two main groups: dogmatic and critical.

Results

The liberal state emerged as a result of a critique of the absolutist monarchical state of the seventeenth and eighteenth centuries. This was the form of state that existed before the French Revolution of 1789. Liberalism arose from a forceful criticism of the monarchical-feudal system, which had its most complete expression in the phrase of King Louis XIV: "The State is Me". This original liberalism had not only a political dimension, but also an economic and philosophical one. Among the thinkers or ideologues were Jean-Jacques Rousseau, Montesquieu, Diderot, Voltaire, Adam Smith, David Ricardo, Malthus, John Locke, etc. All these philosophers and thinkers made a critique of the absolutist-monarchical society, which culminated in a revolutionary process of political-social character as was the French

Revolution, and at the same time coincided with a phenomenon of scientific-technological character: the first Industrial Revolution. Both gave rise to a new type of society: the capitalist society; and to a new type of State: the Liberal-Bourgeois State.

This convergence also gave rise to a new type of worker: the industrial or proletarian worker, and to a super-exploitation of this same nascent proletariat. (RODAS)

Within Political Law specifically, it is the study of the organization of society in which power resides, and therefore the state, which exercises it.

The Theory of the Modern State:

It is based on two concepts: first, that the modern state is constitutional and is structured in such a way that it reflects a specific will and performs the relevant functions to achieve the fulfillment of the same; second, that the modern state is a state of law (which means that it has a properly established system of rules) that submits to a legal discipline in relation to the activity of the inhabitants of the society in which it has influence, with its territory, in their interest and in order to protect them against arbitrariness and injustice.

Political science is a part of social science that studies the practice and concepts of politics and systems of political behavior today. The general purpose is to form, based on the facts it takes from reality in this area, reasons as close to the truth regarding the functioning and political events, relating it to other subjects such as economics or sociology. (Vallés, 2000)

Historically it comes from political philosophy, which dates back to the 6th century BC, with Confucius in ancient China, who developed it as a response to the non-existence of a direct relationship between society and politics in the country. The philosopher appealed to a hierarchical meritocratic state, based on values such as loyalty, empathy and relationships between people. (Hampton, 1997) .

Then the eastern development of this subject took place in Greece, where the form of organization was the city-states. The greatest exponent of this time with respect to this science was Plato, who divided the forms of political organization into four: oligarchy, thymocracy, tyranny and democracy. (Plato, 380 B.C.) .

Already in modern times, two meanings are proposed, one in the strict sense and the other in the broad sense. In the broad sense, political science is supposed to include all the studies concerning politics that have been made in history up to the present day, whatever their nature: theoretical, philosophical, etc.; all analysis in this respect. Strictly speaking, as a first stage, it is understood that politics is born of the behaviorist current, which refers to the experimental and natural study of behavior, which tries to distinguish the behaviors of the individual from the behaviors of others. (Watson, 1961) This in turn refers to what is known as positive political science, in order to distinguish it from political theory and political philosophy. In the second stage, it is established that its object of study is the power exercised over a human collective. (Bobbio, *Politics and Culture*, 1955)

Power, as a capacity, is present in all human interactions when there are at least two interacting actors and refers to the power to do something (RAE). For a being, as part of society, power influences others and is present in all interactions. Its use is evident in manifestations such as negotiation, war, obedience, authority, revolution, and especially political participation in this case, which refers to voting, demonstrations, or the search for public office, which includes as agents the participants, their motives and the institutions or government.

One of the most widely accepted definitions is the one that understands it as "the possibility of imposing my will on the other in spite of resistance". (Weber, 1917) . This concept is currently understood as intrinsic to politics, and as Weber points out, in turn, with violence, since some win and those who lose are subjected to the former. This is where the main conflict between ethics and politics lies: "Cosmic ethics commands us not to resist evil with force, but for the politician what is valid is the opposite command: you must resist evil with force, otherwise you become responsible for its triumph". (Weber, 1917) .

Today's society in general is concerned that there is a loss of values, although this has been a concern that has been present in all times. The existing globalization increases this debate, since cultural changes and exchanges between one and the other are generalized, many times with opposing customs. It is not possible to understand an interdependent world where each of the parties does not share values and codes of conduct.

Politics is the social and practical science whose object is the search for the common good of the members of a community. It is the obligation of all public and private institutions and political subjects to promote the general good, keeping the ethical principles and values that morality demands.

Politics, as a concept, comes from Polis, a Greek word used to refer to a political community that was self-regulating and independent from other regions that included the State and Civil Society; "The State-City was a necessary and natural fact, its organization and behavior, that is, Politics, should be subject to this set of rules regulating its conduct. That is, it had to be sustained by Ethics and subordinated to it. Therein lies the original relationship in Greek philosophy between Ethics and Politics." (Salazar, 1997) . For the Greeks, ethics is the basis and essence of politics, which they defined as the art of the common good, and every citizen had the obligation to be concerned with the affairs of the polis. Politics from that time was considered public, since it was not limited only to the nobility as it happened in ancient civilizations, but it was part of the life of the entire population. By politics we will understand the direction or the influence on the direction of a political association, that is, in our time, of a State. It means the aspiration to participate in power or to influence the distribution of power among the different states or, within the same state, among the different groups of men who compose it.

The politician's ambition is power; power as a means to achieve other ends (ideal or selfish) or power "for power's sake", for the enjoyment of the feeling of prestige provided by power.

Absolute power corrupts absolutely. Someone who lacks exceptional moral sensitivity, and who is just an ordinary, ordinary person, can succumb to the extraordinary temptation that arises from the immense possibilities of power, unless it is limited and controlled.

Corruption, as something we are unfortunately accustomed to in the political arena, could be considered to be caused by a lack of political ethics on the part of those in power, public officials, but most of all, society in general. Political corruption is the "phenomenon whereby a public official is driven to act differently from the normative standards of the system in order to favor particular interests in exchange for a reward. Corrupt is, therefore, the illegal behavior of one who occupies a function in the state structure." (Paquino, 1995) . According to the same author, three types of corruption can be distinguished: bribery,

which is receiving a reward to change the judgment of a public official in his favor; nepotism, when relatives are favored in matters of employment or public contracting and not on merit; and embezzlement, i.e., the allocation of public funds for private use. This same author points out that corruption is seen in terms of legality and illegality and not morality and immorality, although they are very similar concepts, if not the same.

The common good is not only the task of political power but also the *raison d'être* of political authority. Therefore, the common good is the principle and ethical end of politics. Everything that benefits, tends to benefit, tends to increase or promote the common good will be good. It will be bad everything that tends to harm, dissuade, diminish, etc.; in any form, be it impudent or underhanded. It is the obligation of all public or private entities and political subjects to promote the general good, keeping the ethical principles and values that morality demands of us.

Therefore, the common good is the principle and ethical end of politics, and what should be sought in a system is that the legal norms that are established in it, go in line with the way people think, their beliefs and values, although this is complex, given the globalization and multiculturalism of many regions.

The contemporary debate has put in crisis the aspects on which legal positivism was based, determining the opening of the Philosophy of Law, on the one hand, to the world of ethical-political values and, on the other hand, to the world of facts. Law is situated on the level of facts, but not of simple facts only, but on the level of institutional facts. The latter constitute a special category of facts, which have their own dimension and ontological dignity, parallel, so to speak, to the dimension of the raw facts, insofar as they draw their origin from the constitutive rule. What distinguishes the legal rules in the vast field of institutional facts is that they are the functional legal norm for purposes particularly relevant to society, such as the protection of the life and security of the associates and the distribution of goods, inevitably insufficient to fully satisfy the demands of all the associates. The constitutions that return to the constitutional state model differ from the usual rule of law model because they contain principles in which value decisions are expressed that are imposed on the legislator, insofar as principles and values are considered equal in this case, but always considering that the subordination of law to morality is out of

place because it is not entirely free of iusnaturalistic connotations. (Habermas, 1975) .

The Ecuadorian experience is a unique reference that merits reflection and analysis. On the one hand, the country had to face the banking crisis that precipitated the adoption of dollarization in 2000, and on the other hand, it has experienced the insurgency of the indigenous movement which, in addition to achieving social visibility, also gained political visibility, using a set of protest strategies whose main mechanism is the well-known indigenous uprisings.

One of the characteristics of Ecuador since its conformation as a nation, denominated by (Guerrero) as population administration, consists of "the management by private citizens, under republican regimes, of demographic groups (especially in the 19th century) that are not considered suitable for a daily treatment inherent to citizen equality. Generally, reference is made to populations that are classified as uncivilized" (2000: 9). The author refers to the regime of political domination exercised over the indigenous and Afro-Ecuadorian populations by the white-mestizo population within the citizen system, whose historical origin lies in the relations established in the colonial period, and which implies both a relative legal equalization among all inhabitants and a delegation of the government of these populations to a periphery located in the particular sphere of power. In this process of struggle, three types of actors are distinguished: the protagonists, constituted by the representative instances of the State and the indigenous organizations; the allies, personified by social sectors that participate in, sympathize with or identify with the indigenous demands; and finally the mediators, who are actors with social legitimacy, considered neutral by the protagonists. As for the State, since the return to democracy in 1979, it has not been able to articulate, formulate and execute a public policy directed towards indigenous peoples. Since the abandonment of indigenist policies in the early 1960s, represented by the "community development" programs implemented by the Andean Mission, it has included indigenous peoples as part of the agrarian policies aimed at the country's peasants as a whole (Bretón 2001, p. 62): 62), especially the policies referred to resolve the struggle over land conflicts aimed at benefiting large and medium landowners, as well as peasants "viable" to be incorporated into agricultural modernization, clearly represented in the orientation of the integral rural development projects of the '70s and '80s. The emergence of the indigenous movement in 1990 highlighted the discriminatory nature of the Ecuadorian state towards indigenous

peoples. In addition to ignoring their political and constitutional existence, it shows a clear ignorance of their reality and organizational forms. The different "uprisings" have been treated as sporadic fires to be put out, as temporary public protests that, if not resolved through negotiation, have been solved with the use of armed repression.

The so-called "mandate" of the indigenous peoples, formulated after the first national uprising, has been transformed over time, changing according to the vicissitudes of the country's political and economic life. It is worth mentioning that Ecuador, like the rest of the countries in the region, has had to implement a series of economic adjustment measures since 1982, most of them at a high political and social cost.

The movement's insistence on actions and results of a political nature to the detriment of others of an ethnic and cultural nature is also notorious. The lack of a technical proposal to strengthen intercultural bilingual education and the lack of secondary legislation that would allow the application of constitutionally recognized collective rights are illustrative examples.

With this neoliberal approach, whatever increases profits is moral, even if it contradicts the basic conditions of any civilized life in society; any policy that increases profits is also acceptable, regardless of whether institutions are destroyed and the national community is disintegrated. As long as morality and politics remain subject to economics, nothing can be done. Therefore, the first battle is the one that must be fought so that morality imposes limits on politics, and both on the economy Alfredo Eric Calcagno and Eric Calcagno: "To understand politics. Entre la ilusión de lo óptimo y la realidad de lo pésimo" p.234

Conclusions

Within what constitutes the regulatory framework of the State, the right to resistance, which is considered part of "Natural Law", seeks to regulate "borderline situations", so that the just right - Natural Law - represented by popular resistance, civil disobedience or other manifestations of the people, are not silenced or harmed by a Positive Law exercised in a despotic or arbitrary manner.

The Right to Resistance is not a new Right, although it is true that it has been incorporated in the current Ecuadorian constitution, as in other countries it was already incorporated in previous times,

however, there are norms in favor of Human Rights, which guarantee the rights, so it is of immediate application.

The legal norms are necessary within the execution of the law, since by means of the same regulations, norms, as well as statutes and other international treaties that are of great help for the country, as for the execution and realization of the norms that govern the citizens of each one of the states, determinantly of the fact that has committed a human being, this will have to have a sanction that will be written by the legislator and judged by the judge, who will have in his hands the execution and fulfillment of the punishment for the erroneous conduct of an individual.

On the other hand, it is evident that the legal rules originated from the time of Roman law, since without them the precepts and laws that had been established in those years would not be executed, which means that the rule is born with the law and the same must be respected and contemplated, since a law is written, etc.. Thus highlighting the advantages and disadvantages of the same in accordance with human conduct.

As a complex process, globalization has become an obligatory subject of analysis for the Social Sciences, which are in charge of reviewing its impact on the different areas of study. Some make a review based on economic theories and the discourse that supports the market, others, whose object is the description of a new dynamic that by its potential transforms societies, actors and in general the content of the human and its cultural transcendence, without leaving aside a position that shows the dark side of a process that opens the gap between "some" and "others", suggesting loudly the construction of a globalization from the bottom up. suggesting loudly the construction of a bottom-up globalization, through a participatory, democratic and transparent transnational civil society, that is to say, a new global cosmopolitanism. In this order of ideas, Law cannot be alien to this study, since globalization generates a new panorama, which arises from the transformation suffered by the State itself, which ceases to be the legitimate producer of law, suggesting the passage from legal monism to legal pluralism. This in no way implies the disappearance of the State; on the contrary, it invites the recognition of new competences and spheres of action in the development and future.

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