

NEOCONSTITUTIONALISM IN MEXICAN CONSTITUTIONAL LAW WHERE IS NEO-CONSTITUTIONALISM LEADING US?

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ABSTRACT

Through the theory collected, it can be understood how the construction of neo-constitutionalism affects different areas and generates a strong current with which various theories arise that seek to reach the same answer that is nothing more than the political order being governed by the clarity and transparency of the various bodies and above all people who are responsible for carrying out their *raison d'être*. This research seeks to describe how neoconstitutionalism goes through different stages in which it is involved and the changes it has undergone throughout its current understanding, which is why it is seen with a critical look from a literary analysis.

Keywords: Neoliberalism, Neoconstitutionalism, Law

As we can conceive of Neoconstitutionalism, as a legal current, which today and through the study work of great jurists such as Luigi Ferrajoli, Carlos Nino, Susanna Pozzolo, Robert Alexy, Ronald Dworkin, Gustavo Zagreblesky and Rodolfo Luis Vigo, among others, confronts and challenges the iuspositivism of Savigny, Kelsen, Hart and Bulygin, mainly, and make a contrast.

Neo-constitutionalism as a legal current appears after the Second World War in countries mainly of the European continent, derived from the violations perpetuated against human dignity under certain legal regimes in force. This current of thought explains the process of transformation in law, which occurred with the inclusion of principles in the constitutional charters, which are conceived in the neo-constitutionalist context as true legal norms that permeate and support the entire legal phenomenon.

What is called neo-constitutionalism is not a theory of the Constitution, nor a philosophy of law or politics, as one might expect. It is a horizon, a boundary line that separates what is seen from what is not seen; A perspective on which contributions are grouped that come from different directions, but

that are all linked by the same impulse. In the scenario previously framed, constitutional or democratic States of law were configured, in which Constitutions are perceived as legal documents that are not limited to establishing the rules of the game of public powers, but also incorporate a broad material content, which conditions the actions of political actors and individuals.

Thus, neo-constitutionalism is assumed as the theory that explains the new form of political organization. Neo-constitutionalism has generated a new form of legal interpretation; that is, constitutional interpretation. The difference between the latter and the former is that judges have to locate the basis on which the law is developed and not only present the meaning of the rule. The above, by virtue of the fact that they now operate with moral ideals and not with simple rules.

Theories around legal argumentation arise within the context of neo-constitutionalism. They are a response to the dehumanization and abuse in the application of the law that occurred under certain legal regimes. Thus, these theories sought to bring the legal phenomenon closer to man through open or maximalist reasoning; that is, the one that not only concentrates on the formal aspect of law, but rather on issues valuable to society, such as the concretization of moral ideals.

The new conception of the "rule of law" or "neo-constitutionalism", where the idea of the "legislative state" has been overcome; It carries with it important consequences for the law as such. It is Gustavo Zagrebelski who distinguishes the conception of the "Legislative State" that is governed by "rules", to the "Constitutional State", where the "Law" is going to be governed by principles. The word "norm" refers to something being or being produced; in particular that a man must behave in a certain way. However, with regard to the meaning of the separation of law from rights and justice, within a generic notion of such a norm it is important to differentiate what might be called a "rule" from what could, on the contrary, be called a principle. If the present "law" is composed of rules and principles, it should be noted that legislative norms are predominantly rules, while constitutional norms on rights and justice are predominantly principles (and here they are interesting insofar as they are principles). Therefore, distinguishing principles from rules means, broadly speaking, distinguishing the "Constitution" from the "Law".

Neo-constitutionalism does not deceive itself, it knows that the difficult cases are there, just as the collision between conflicting principles; recognizes these circumstances or obliges the judge and any authority to provide sufficient reasoning to justify the decisions. Judicial discretion is controlled, not with a false and inadequate tool, subsumption and syllogism for all cases, but with different arguments that mean a greater justifying effort, as is the case with the use of the principle of proportionality (weighting). Methodologically it is said that Neoconstitutionalism connects Law and Morality.

So as we must understand Neoconstitutionalism, not only as a theoretical current, but also as a historical process, through a conception about legal reality and a doctrinal, institutional and ideological position, we must also know that it can be considered as the interpretation, protection, guarantee and respect of human rights recognized both locally and internationally.

To do this, it relies on tools such as argumentation, weighting, the proportionality test and principles such as pro-person, as they are fundamental pieces in the application and interpretation of the Law.

In Mexico, neo-constitutionalism began on June 18, 2008, where the criminal process was transformed from a mixed system to an adversarial system, where our Constitution was modified to produce a remarkable change not only in the structure of litigation, but also sought to substantially change the way of investigating and prosecuting crime. Improve defense standards both materially and technically.

We must have as an important date, June 11, 2011, the day on which Mexican neoconstitutionalism acquires a material and formal aspect, since the most important constitutional reform in the field of human rights in history in Mexico was carried out in our legal framework, because for the first time the international human rights law to which our country has been obliged was taken seriously, But above all, it opened up to a new perspective in terms of respect, protection, promotion and guarantee of such a noble theme in relation to the dignity of the human being.

By far, what is characteristic of the theoretical current of neo-constitutionalism is that it describes the way in which the Constitution is conceived in democratic States; that is, as a legal norm that not only establishes the functions of public entities, but also recognizes a system of principles that serve as guiding criteria for actions in the public and private spheres.

On the other hand, it should be noted that in addition to conceiving a dense material content in the post-war Constitutions, their supremacy is also recognized, so that they function as instruments of guarantee and realization of fundamental rights.

Based on these ideas, it must be understood that the importance given to the Constitution in the neo-constitutionalist philosophical current as a fundamental directive norm must be contrasted with the nineteenth-century model of the rule of law. This is so, because since the Constitution is a true legal norm that serves as an element of foundation of the essential rights of individuals and not as a mere manifesto of good intentions, it is then necessary that the laws issued following the previously established legislative process could be constituted as illegitimate, because they are opposed to such rights.

One of the theses that most distinguish the neo-constitutionalist legal current is the objection against the majority, that is to say that this objection consists of the rights of the minority, of the unprivileged, of those who lost the elections, of the practically unrepresented, of the less favored, of the pariahs, of the individuals who, nevertheless, They must be heard and respected for democracy to gain legitimacy.

Authentic modern democracies leave out of the active or omissive reach of the State, as well as the decision or omission of the majority or rather, the tyranny of the majority, a forbidden preserve, trump cards, immunities, insurmountable limits, fundamental rights, human rights, the sphere of the undecidable.

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