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LAW AS THE EXPRESSION OF POLITICS AND THE RESULT OF ITS OWN DYNAMICS

Abstract:

I will argue that law is the expression of politics. In its multivalent character, law is the result of its own dynamics and the outcome of negotiations mediated by unequal actors in a political scenario of power relations. When the impersonality, neutrality and uniformity of the law is discussed, it is only a representation and an illusion, because at its essence is the creative process, which is not homogeneous and contains both authoritarian and liberating elements, as the very legal system reveals the contradictory nature of social life. The law disguises its internal contradictions and develops a dialectical and fetishist identity, taking on a life of its own, independent of how, when and in what context it was created. The negotiations and mediations that influence the creation of law are not independent from the relationship between the different interests at play in each historical and political context. They make the process of law creation possible and/or feasible. I discuss law as a process and argue that law and legality have different dimensions and different moments. Their ideological, political and rational dimensions would seem to exclude one another, but they do not. In this process, the individual is present and absent from the different moments of the law and the legal system makes the individual both appear and disappear. The law is finally the result of interaction between different individuals in the political, as well as in the cultural-ideological and the economic level, but the law ultimately makes them equal: we are all equal before the law. In other words, the law denies individuals their autonomy and transforms them, making them all equal even when they are not, but at the same time it gives them autonomy and presence by making them subjects of law endowed with rights, epitomized in the doctrine of the Rule of law. From a theoretical perspective, I explore the relation between law and politics, understanding lawmaking as the outcome of processes of struggle that either maintain the social and political order or promote change. Analyzing the dynamics of legal processes is essential for comprehending how the law has been embedded in the political sphere (via conflict and consensus) and in ideological debates. It is in this sense that I claim that law is both an expression of politics and the result of its own dynamics.

Keywords:

law, politics, law creation