SOME GENERAL CONCEPTUAL DEVELOPMENTS OF THE CONSTITUTIONALITY OF SOCIAL JUSTICE

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Abstract:
Social justice is defined as a value that promotes equal respect for the rights and obligations of every human being in a given society and is generally focused on the fair and equitable distribution of the basic goods and services necessary for the development of a person in society, such as, for example, emotional well-being, education, health and human rights. Social justice is characterized as being one of the most important social values in society which aims to ensure the common good and the harmonious coexistence of the society in which they live. Justice ensures the balance between the individual good and the common good on the basis of fundamental human values. In this respect, social justice focuses its efforts on the search for equity in the various social issues that still need to be resolved.
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Conceptual elements of social justice

The concept of social justice was invented in 1840 [1], and it designates how justice is applied in a society in relation to the social classes existing in it. It refers to the concept that everyone must have the same economic, political and social rights and opportunities. For the supporters of social justice, the most important role of the state is to ensure the well-being and respect for the rights of its citizens, regardless of their social class.

In classical approaches, the issue of social justice refers to the way in which social wealth, power and prestige are distributed among the members of the group or a society. [2] The central concepts with which it operates are equality and equity. If things are judged by the insistence with which statistics are used to highlight inequality, leftist ideologies claim that the only society truly just - equitable - would be the one in which social wealth

and power would be distributed statistically equally among the different social categories. On the other side, liberal ideologies consider that such an egalitarian society would be unjust - unfair-, because in any human society the members make an unequal contribution to the production of social wealth, and equity is achieved when everybody receives a part proportional to their contribution. It is not equality of benefits that ensures equity, but equality of opportunity.

Despite some attempts to establish full equality between members of society, social inequality appears to be the common trait of all known human societies and from this perspective social inequality can be defined as the difference between wealth, prestige and power among social groups. The social attribute in the phrase "social inequality" refers to the fact that the respective situation targets a group - not individuals taken in isolation - and is produced in the collective experience, that is, it does not result from natural attributes.

The evolution of the concept of social justice in the context of the Europeanization and globalization of law

The evolution of globalization but also of Europeanization of law [3], the legal orders created by these new trends, have led to the adoption of new regulations of domestic law, regulations that are part of a modern legislative system, a system created and used in the interest of the litigant and for his benefit.

Considering the role of law [4] as the main guarantor of the social and legal order and of the respect for the rights and freedoms of individuals, law is not usually equivalent to justice [5] because the latter is characterized by a series of rational elements such as: the equality of the parties, the rational and logical nature of justice, the idea of equity and proportionality in the distribution of justice and in fact materialized in the stability of the laws and their uniform enforcement. Consequently, law cannot fully achieve these rational and factual elements of social justice, and therefore it can never be, at the same time fair, just and equitable for all individuals, just as no fair or just society will be more efficient and functional, than a legally-legislatively unfair one, which would lead to the relativity of the criteria according to which the notions of justice and fairness are defined in the various regulatory systems.

At its origins, the concept of *social justice* is based mainly on religion, so Christianity, Judaism, Buddhism, Hinduism, Islam contain elements that are found within social justice. Due to this, social justice has long been a part of religious teachings.

Based on the teachings of Saint Thomas Aquinas, in 1840, the Sicilian priest Luigi Taparelli D'Azeglio, creates the term *social justice*, which later becomes a concept and designates the way in which justice is applied in a society in relation to the social classes existing in it. In essence, it refers to the concept that everyone must have the same economic, political and social rights and opportunities. For the supporters of social justice, the most important role of the state [6] is to ensure the well-being and respect for the rights of its citizens, regardless of their social class.

Social justice is seen as part of a series of moral, political constructs aimed at equality of rights and collective solidarity, which is essentially a project necessary for a fairer society, but which must acknowledge the permanent existence of injustice. Social justice is based on the equal rights of every person and the possibility for all human beings, without any discrimination, to benefit from economic and social progress anywhere in the world. It consists not only in raising income or creating jobs, but is also an expression of rights, dignity and freedom of expression, of economic, social and political autonomy.

The psychosociology of social justice [7] has as its object of study *subjective justice*, aiming to understand what people think is right or wrong, just or unjust, honest or dishonest, as well as the way in which people justify these judgements by treating the origin of feelings of satisfaction and dissatisfaction with income, regarding groups, as well as authorities and rules of governance, in which people are involved towards one another.

The classical concept of social justice refers to the way in which social wealth, power and prestige are distributed among the members of society. The central concepts with which it operates are *equality* and *equity*. If this issues is judged by the persistence with which statistics are used to highlight inequality, leftist ideologies claim that the only society truly equitable would be the one in which social wealth and power would be, in theory, distributed equally among the different social categories. On the other hand, liberal ideologies consider that such an egalitarian society would be unfair, because in any human organised society the members make an unequal contribution to the

production of social wealth, and equity is achieved when everybody receives a part proportional to their contribution. Equal opportunities to benefit ensure equity in society.

Another more complex and nuanced point of view regarding the fairness of social justice through which a pluralistic, compensatory theory of distributive justice, according to which the distribution made after different procedures should not be a means of domination, was developed. Such a broader concept of justice implies that people must be dominant in one situation and be dominated in another. If the principles of social justice are multiple, without there being a single distribution centre and no single criterion, in this case equality does not mean an equal distribution of all property to all members of a society. The different nature and social significance of goods make an equal distribution neither possible nor desirable. As a complex and multimediated relationship between persons, equality is not an identity of possessions. It calls for a diversity of distributional criteria reflecting the diversity of social goods. The regime of complex equality is the opposite of egalitarianism and also of tyranny. It establishes a set of relationships such that dominance would become quasi-impossible. Beyond a certain simplification and idealization of the "spheres of justice", as well as a separation of them in the process of producing redistributive justice, the theory of *complex equality* proves, in fact, a theory of equity from the postmodern perspective of communitarianism.

Procedural justice, [8] unlike normative theory, is a theory of an empirical nature, and focuses on how the state should proceed in order to do what it should do. Depending on the type of allocation underlying the redistribution (universalist, discretionary or individualized personalized), procedural justice can be translated to equal treatment of all individuals (in the case of categorical universalist benefits – a universalist distribution), treatment of all individuals according to the specific circumstances in which they are, based on criteria considered to be relevant and defining for them (in the case of social assistance benefits – an individualized distribution), or treatment of all individuals according to need (in the case of personalised social services, but also in the case of the provision of medical assistance, for example). Hayek also believes that social justice can be spoken of meaningfully only in primitive communities, where there is only one common goal (obtaining the necessary food), and a deliberate distribution of the results based on the merit of each in obtaining them. However, modern society is organised differently.

People cooperate here as well, but there is neither a single common goal, nor a single hierarchy of goals or needs; the merit of each in achieving common prosperity is practically impossible to assess precisely, due to the complexity of activities and contributions. As such, modern people no longer organize themselves based on rules focused on merits, rewards proportional to merits, common goals and contributions to their achievement. They are organized on an individualistic basis, each pursuing their own goals and rewards in a competition in which no one has the supreme authority to decide *how much* and *what* a certain person deserves, or what needs are more pressing and should be satisfied as a matter of priority.

Justice, and especially social justice, is defined as the first virtue of social institutions, as truth is to the systems of thought, to the systems of philosophy. Any theory, no matter how elegant and economic, must be rejected or revised if it is not true; similarly, laws and institutions, no matter how efficient and well-structured, must be reformed or abolished if they are unjust. [9]

In any society, social justice must ensure the unhindered exercise by individuals of their fundamental rights and obligations, thereby ensuring the legality and legitimacy of the act of justice. [10]

The concept of legality [11] is closely linked to that of lawmaking and legislation, which is why they are sometimes confused with each other, although they relate to different activities. If lawmaking includes the activity of drafting laws and regulations, its result is precisely the legislation which, in turn, is the objective of legality.

A system built on social justice [12] is not based on doing favours for every member of society, as the social interaction configured around it becomes unimportant. The notion of gift is replaced by benefit and social assistance, defined as *the expression of a fundamental right*. The person who receives social benefits is not the subject of a favour, whether it originates from pure love; the benefits are granted to him by virtue of a system that seeks to apply the principle of justice to the "injured" party. In a society based on social justice the "favour" takes the form of a type of moral and material "reparation", being an act of justice that is done to its beneficiary. This approach is based on a type of philosophy which implicitly recognizes the essentially unjust and arbitrary character of this world and seeks, through the instruments at its disposal, to mitigate the consequences of

the fundamental injustice of the world. Offering these material repairs is, in fact, guaranteeing the equal exercise of fundamental rights by all citizens, not just by the wealthy. Without the implementation of the positive rights by which social justice is achieved, the implementation of negative rights such as the right to liberty, life or property, etc., cannot be ensured and pointed out in a famous example [13]: if a poor man and a rich man have a dispute over the right to property, the rich man will hire good lawyers and will win the case, therefore the poor man's right to property will be violated. Positive rights therefore serve those human interests which are necessary for the minimum exercise of negative rights.

There is a strong connection between social justice and social well-being, as long as the achievement of a model or goal of social justice involves the redistribution of resources [14] and the sharing of benefits and obligations within social cooperation. The connection between social justice and freedom and rights, on the one hand, and social justice and equality, on the other, can also be regarded as very important. Some authors consider that freedom is incompatible with any redistributive form. [15]

A prominent legal expert managed [16], in the early '70s, to bring to the attention of the scientific community the concept of social justice and wrote that a society is just if it observes three principles, in this exact order: guaranteeing fundamental freedoms for all, "equitable" equality of chances, maintaining those inequalities that may benefit the disadvantaged.

The current approaches to the issue of social justice are based on the concepts of life chances and equal opportunities. *Life chances* refer to the possibility of the members of the society to access the things considered desirable and to avoid the things considered undesirable in the given society.

On 10 June 2008, the International Labour Organisation unanimously adopted the ILO Declaration on Social Justice for a Fair Globalisation. It is the third major declaration of principles and policies adopted by the International Labour Conference since the 1919 ILO Constitution. It is based on the 1944 Declaration of Philadelphia and the 1998 ILO Declaration on Fundamental Principles and Rights at Work. The 2008 Declaration is an expression of the contemporary vision of the ILO mission in the age of globalisation.

This important declaration is a firm reaffirmation of the values of the Organisation. It is the result of tripartite consultations following the report by the World Commission on the social dimension of globalisation. The declaration comes at a crucial political moment, reflecting the broad consensus on the need to give a strong social dimension to globalisation so that results are better and are shared more equitably among all. It is a starting point for promoting fair globalisation based on decent work and a practical instrument for speeding up the implementation of the Decent Work Agenda at state level. It is also a reflection of a productive vision as it highlights the importance of viable enterprises in creating more employment opportunities and earning income for all.

Conclusions

In conclusion, the new economic order, based on knowledge, which will be achieved in the future society of knowledge, integrates the objectives of sustainable development, based on social justice and equal opportunities, freedom, cultural diversity and the development of innovation, the restructuring of industry and the business environment, representing a new stage of human civilization that allows broad access to information, a new way of working and knowledge, enhancing the possibility of economic globalization and increasing social cohesion. Social justice was, is and will continue to be an important factor in influencing public policies around the world. It is increasingly obvious that the modernisation of a state depends very much on designing and developing an effective system of social justice, a system which is likely to change with each generation. Great reforms are carried out not only in the legislative field, although such an element is essential, but they also require considerable budgetary efforts, but also a more demanding and impartial involvement of the people serving justice in the act of social justice, and even if great progress has been made, the issue of social justice has not disappeared but is today mainly raised in relation to the distribution and redistribution of values and human resources in a society.

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