Review

LAW AND SUSTAINABLE DEVELOPMENT

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Abstract: In this work, I start from the new relationship between the public and private spheres. Legal rules undergo a conversion in anankastic rules and the legal order becomes a system which provides its own legitimacy on the basis of its intrinsically autopoietic nature. In addition, the initial concept of legal relations and their components are transformed into a technical-legal order under the influence of a new technical term.
It can be seen from the above statement that the system of sources for the law has changed and the protection of the sustainable development is new, giving predominance to agreements. The centre of gravity will have passed from the law, as a product of the will of the State, to contracts between private individuals (although those private individuals – or some of those private individuals – are the large multinational companies). This goes hand in hand with an increasing, and relative, loss of sovereignty by States as a derivation of the progress of supranational and transnational law. So, insofar as contracts constitute the typical form of legality regarding globalization in the sphere of sustainable development, law tends to be seen less as the product of a political will, and greater weight is given to a view of the law as a means to obtain certain ends, as a mechanism of social construction.
Keywords: Law, Sustainable development, Human rights, Society, Judges.

Introduction

At the present time increasing attention is being given by legal theorists and practitioners to the whole area covering law and sustainable development. Despite this growing volume of work, we consider that any contribution to the subject which adds a new vision and perspective may be of interest. I believe should start from the fact that, increasingly, there is a new relationship in the borders between public and private law. Public authorities are progressively turning to private law when selling their assets and use contracting to fulfil the missions entrusted to them, providing services indirectly through licences to private companies, extrapolating to the public ones formulas which are used in private Law or resorting to the forming of foundations (Chevalier, 1998; Zapatero, 2009).

Now, another good assumption is that of the trend towards americanization of the law, explained because globalization is given impetus by the needs of the global economy and by the unequal distribution of power. There is dissemination of concepts, figures and practices coming from the United States of America (Shapiro, 1993). Although also from this viewpoint, it is worth underlining that it comes from a restructuring of the international legal field, which has its origin basically in the practice of law carried out by the large American legal firms and by the influence of American legal education on the elites of the Latin American States. But, if we go deeper into the matter in question, this idea of unification which is present in the legal dimension of globalization poses some questions: Do all countries have the political, social and cultural prerequisites to bring this harmonization to a successful conclusion? Can we talk of a genuine harmonization of law, or rather that there is uniformity of the rules, but not the practice of application? And, in all the fields of law, are all these tendencies carried out in the same manner for obtain a sustainable development? (López Ayllón, 2004; Mittelman, 2000).

Meanwhile, we should not overlook the part of the doctrine that advocates the unification of private law, or in some cases harmonization, through the commercialization and generalization of commercial law, claiming that its autonomy, which arose spontaneously when trade was carried out exclusively by traders belonging to the corporations, is anachronistic in a period in which acts of commerce are performed freely by all kinds of citizens. In addition, the growing uniformity of the economic environment in the globalized society means that contractual demands are today for all producers. The duality of Codes of Private law has numerous drawbacks because it brings

repetitions which are useless, and complicates the application of the law by stirring controversies with regard to the way in which its provisions have to be combined and, above all, regarding the delimitation of the acts and business which must come under civil or commercial jurisdiction. That, even scientifically, the division is negative because it damages the commercial law, insofar as it isolates its institutions from the general theory of obligations; and it damages civil law, by depriving it of the elements which might renew it, adapting it to the new circumstances (Flood, 1996).

Nevertheless, what is true is that there are areas of Civil law which are and always have been inaccessible to commercial law, such as the rights of personality, family relations and successions. Similarly, there are sectors such as bills of exchange, payment orders, cheques, societies with commercial form, insurance, banking, bearer industries and, in general, all those which require a company organization, which claims an autonomous treatment whether or not it is included in the commercial Code (Wiener, 1999).

The Role Of States

In this way, this results in a singular structure with a special mechanism by which the State has to provide assistance and services, and create, strengthen and promote the conditions allowing individuals and groups to satisfy their needs. Thus their obligations are also related to the prerequisites for exercising positive liberty. The main point of departure is that individuals are moral subjects endowed with dignity. It defends the idea that we all have real capacity for choice and that we all direct our existence towards certain aims in life (Peces-Barba, 1999).

From a different viewpoint, the arrival of social States has been accompanied by the loss of generality and abstraction of laws. For this reason, special laws have been developed, and a step by step process of delegation and fragmentation -that has led to the creation of confusing, specialized and highly technical laws- has taken place. In fact, the various repercussions of laws on the economy and on work, in addition to the increasing levels of red tape, meant that laws have become an instrument that resolves problems of the moment, that attempts to meet immediate needs, it is no longer envisaged as the result of reasoning, but rather as the equilibrium point of the interests of the legislator, the executive power and Public Administration. Law as an instrument of the social State and its use for purposes of integration and performance of social policy has imposed material rationality over formal rationality. This materializing process aims to protect positions using rules and accomplishes this by modifying some power structures and by controlling socio-economic processes. We cannot, however, talk about a material Rule of Law that has a minimum set of formal conditions for there to be a minimum level of legal security, even if it is based on material and rational reasons, in such a way that the regulatory content of laws must be sought in its adaptation to the actions linked to them and the results they are expected to yield (Galiana, 2003). In a few words, what should be highlighted is the validity that has passed from being based on the meeting of certain requirement to adapting to a complex set of ideas because of the power struggle between lawmaking institutions and the sources of Law, so conditioning the legislator depending on the content of principles and rights (La Torre, 1995; Prieto, 1998).

The liberal Rule of Law that has been described has gradually evolved and has become the ideal of the constitutional Rule of Law. The first problem we encounter is that of knowing what *constitutional State* means, after a first approach we assume that it is a State in which there is a democratic Constitution with normative value that sets legal limits in order to guarantee the liberties and rights of individuals (Añón, 2002; Prieto, 1999). From this we can infer that there is a Constitution that is the most important law in the system and that directly determines the validity of the other laws in the system. The Constitution is made up of values, principles, fundamental rights and rules that affect the government, however, the principles are directly and indistinctly applicable by legislators and judicial operators. Within the scheme, the key element are the fundamental rights which make up the basis of the legal system in the formal and material sense, because they set material limits on public and private powers, in addition to establishing what their aims should be, and serve as institutional guarantees, objective rules that make up part of the legal system and subjective rights that have a particular value over the above-mentioned powers and relations between individuals (Prieto, 1998). Fundamental rights are the *raison d'être* of constitutional States, because both their origins are an attempt to create coherent proposals to protect, guarantee and make these rights more effective. A certain type of fundamental rights corresponds to each type of State, and so it is logical that the constitutional State must correspond to a certain type of rights. But, what type of rights? The new type of rights (Díaz, 2004; Pérez Luño, 2014).

From our point of view, a procedural democracy is not enough, since in constitutional Rule of Law, fundamental rights cause a primary transformation in that they refer to the way in which democratic mechanisms work, in what concerns their areas of influence and their limits, because democracy is not always a possible State, is not always

possible in morally acceptable conditions nor is it always an appropriate or desirable result. On the contrary, a material democracy entails considering a series of values as inherent to democracy. Such vales are, because of the link with liberalism, freedom and formal equality, and because of the link with ethical socialism, material equality and solidarity (Beetham, 2000; Martínez de Pisón, 2001). Consequently, the solution of the dilemma, as Bobbio says, consists in that formal rules are necessary but not enough, and that it is desirable that there be at least a series of requirements as to what their contents should be (Bobbio, 2003).

In synthesis, material democracy is linked to fundamental rights and to the defence of a set of values that make part of it. It is evident that the laws in which these values are established, and that refer to the sources and means of developing the primary laws, indicate what should or should not be decided, and hence determine their essential contents. For this reason we think that the *coto vedado* theory of Garzón Valdés is a good example of what we have just said. Within the *coto* are the fundamental non-negotiable rights which are necessary conditions for a representative democracy to exist. Dissenting opinions, negotiation and toleration could only exist outside the *coto* (Ferrajoli, 2006; Garzón Valdés, 2000).

Following J.S. Mill and Bentham, distributive justice is summarized according to the statement: "Between various possible distributions, a just distribution is that which proportions the greatest happiness possible to the greatest number of people". The problems arise because there are situations which oppose equality and which are not solved by utilitarianism; there are also inevitable inconveniences in an economic system in which supply and demand play a decisive role (Quintana, 2001).

We accept the defining argument of L. Hierro (1995) on equality, saying that there have to be adequate resources among all human beings to satisfy basic needs, leaving each to develop his life plan in a similarly autonomous and free way. The tension between equality in practice and in law gives rise to a clash between principles. This should be resolved using the techniques of deliberation. In answer to the question whether there is a general rule of preference, the answer lies in equality and not in differentiation. There is always a reason for equality. Thus equality should be proposed so long as some real inequality does not offer a reason allowing or, depending on the conflicting arguments, imposing a differentiating regulation (Prieto, 1998).

There is a complementarily between equal opportunities and results which is made evident largely in the non-contradiction between liberty and inequality. The achievement of substantial equality justifies a differentiated treatment as long as there is social inequality, and the aim is to reduce or eliminate it in order to obtain a more just society, preventing forms of neutralization, interiorizing or annulling of differences so that minority groups do not remain marginalized (Fariñas, 1997). This technique involves defective procedures which have to be changed. Peces-Barba has pointed out the great confusion caused in States offering general social rights, in which equality as a differentiation is an instrument for extending them to everyone, rather than for obtaining equivalence (Peces-Barba, 2006). Beyond the research on the criterion of relevance of each operation, the transcendent importance of health, food, education, housing or culture is clear. At other times there are needs whose relevance does not seem so clear (Calsamiglia, 1988; Fernández Ruiz-Gálvez, 2003; Pérez Luño, 2005). In this case, as a footnote, the right to become and continue to be owner or debtor creates its guarantees related to the protection and ethical nature of the right to property or credit. The frontiers between fundamental and ownership rights have to be defined (Jori, 2009).

A legal guarantee is a functional, relational and multidimensional reality that can be analysed within a legal system (Peña, 1997). In general, if we apply Kelsen´s theory beyond it´s constitutional formulation, a right that is not guaranteed is not authentic, therefore it is advisable to separate the issues of rights and guarantees on the basis of the legality principle as a Rule of recognition. This distinction, in Ferrajoli´s opinion (2009), is of great importance at both a theoretical and metatheoretical level. In the former it is thought that the absence of guarantees amounts to the existence of loopholes, which national and international authorities are compelled to protect against. The latter goes a step further, here the distinction does not come down to having a descriptive role, but also a critical and normative role. It is critical as regards the loopholes and antinomies that must be emphasized, and normative, as regards the legislation and jurisdiction. As far as social rights are concerned, it is necessary to distinguish between the possibilities of technical and political realization. Technically they can be guaranteed, because the acts required to satisfy them would inevitably be discretional, unable to be formalized and would not be susceptible to jurisdictional controls and constraints. For that reason, the complexity is essentially political.

Ferrajoli (2009; 2010; 2011) talks of primary guarantees, of prohibitions and obligations that go hand in hand with the rights and, similarly, of the relationships that exist between what is permitted and what is prohibited, and between what is permitted and what is not compulsory. The secondary guarantees are related to the responsibilities of the judicial Organs to apply sanctions or declare annulments, if there are invalid or illegal acts that infringe the

obligations or prohibitions that constitute the primary guarantees. Therefore, Ferrajoli adopts a formalist stance, separating fundamental rights from their guarantees, and insisting that problems can be resolved theoretically because of the existence of a normative disfunction. But, we must not forget that in practise we do come across antinomies that cannot be resolved by interpretive means, but instead by annulment. In the case of a loophole that can be resolved by a normative act, theories such as "every right consisting of the hope of a benefit implies a corresponding obligation" must either be renounced or else compelled to deny the existence of the regulations that introduced the right.

In this way, the question of guarantees means that there are rights with a greater degree of resistance than others depending on what the authorities have decided (Prieto, 1998), in fact Guastini (1994) goes as far as to talk of real rights and presumed rights. The existence of one attributive regulation is sufficient to confer rights. On the other hand, the fact that they are promulgated does not mean that they are guaranteed, it is also necessary to have the appropriate mechanisms available for their protection. In short, the real rights are those susceptible to jurisdictional protection, being able to be applied or vindicate themselves before a specific subject. The content refers to a clearly-defined conduct of responsibility, with a subject who is the holder. And the presumed rights are those which do not satisfy any of these conditions.

Legal Models And Ideologies

The idea of surpassing the State has appeared in different proposals aimed at establishing a new *ius commune*, which is the case of Cappelletti, Häberle, Pérez Luño and Pizzorusso, or of a *ius novum universale*, as in the case of Domingo Oslé. These denominations allude to a common law, which represents a kind of connective tissue linking current legal regulations, or a universal law made explicit in documents and agreements on human rights, pursuing international criminal organisations and general rules for economic traffic, at the same time as it manages to sustain itself in jurisprudence (Fitzpatrick, 2001).

It can be drawn from what we have said up till now that from the alternative development of the Welfare State model, important legal changes have come into being. These changes take shape in various points: a) the use of new legal regulations, characterised by their vagueness and imprecise meaning, which is the case of the standards and general clauses which can take on a different meaning in the areas of legislation, and Administration; and b) the change means going from a formalist legal reasoning towards a finalist legal reasoning which is oriented towards principles. This question links directly with the dynamic emanating from the Welfare State, given that the State takes on new function and acquires a central role which was not that of serving as an arbiter of the liberal Rule of Law, which is why the law connected to it is a Law for which the logical deduction of legal consequences takes a back seat (Julios-Campuzano, 2007). The aforementioned paradigm is exceeded by a plural reality, both in the legal framework and in the social, political and economic one, where each of these spheres is not isolated from the rest, but there are intimate implications and connections between them. All of this means that the simplicity of modernity is broken.

The legal models are reduced to ideologies, defined according to the political tradition of each area: a) The social-democrat model; b) the corporate model; c) the South European or catholic model; and d) the British model. The regulated types are inscribed in the "liberal market", "progressive liberal" and "institutional welfare" models (Botella, 1997).

The birth of the new paradigms of law arises from the awareness that a monistic and monolithic context is not possible, when it is seen that new forms of law have emerged which are above and below the State. But one has to go further still, because the regulatory complexity of the systems in force transcends mere complication, and develops the notion of resourcefulness and criss-crossing of relations from one institutional level to another (Jenson and Sousa Santos, 2000). According to Arnaud, one of the new paradigms which should be mentioned is that of the logic of the flexibility which intends to generalise flexible logics. These flexible logics have different origins: the origin of some is strict traditionalism, which is the case of the objectives of the law, of the general principles, of the standards or of the democratic legitimacy. What's more, the same democratic legitimacy is considered a standard and the adjectives normal, exclusive, reasonable, unpredictable, prejudicial, etc., on a number of occasions come into being as a genuine creation of law. Meanwhile, there is a certain number of criteria drawn up from standards which have been situated on the level of principles of interpretation of European Law; this is what happens with the principles of legality, legitimacy or need, with regard to the democratic spirit. Added to this is the legal porosity which has an impact on interlegality, creating networks. From this point of view, there are alternative flows and reflows of the legal and social regulations considered the two sides of the same coin (Arnaud and Fariñas, 2006; Gessner, 1994).

From this point of view, it must be taken into account that the sources of import are, often, very diverse. Many of the regional and international instruments are creations which obtain, in part, elements from a variety of national sources, but which involve the incorporation of totally new relevant elements without reaching the assumption that there is a simple binary interaction between the legal traditions and orders. In this sense, dissemination may occur between many types of orders and between different geographical levels, not solely in a horizontal way between national legal systems. The rules followed must be: estimate the social structure and that of the individual subject; gather social arrangements and clear policies; attempt to have a positive influence on directive thinking and community co-existence; clearly define the functions when representing the legal organization; discover an intimate relationship between division and centralisation of the community's social activity; articulate the system from the authority side, but without exaggerating the disciplinary dependence on the collective; establish a mutually favourable relationship between each scale of influence and of social and political power; always bear in mind the origins of each functional specialization, but without making, in any event, ulterior evolution depend on the former; and include customs and institutions adapted to clarifying purposes and norms in the centre of each organic activity produced in society (Twining, 2007).

But the possible construction of a global law has undergone changes because of the superposition of the levels of legality in play. The multiplication of legislative instances and the proliferation of regulations have brought about a change in the panorama. Now the legal system is open and flexible, and its regulations intertwine with others from different instances. Although if we had to establish one note, this would lie in the fact that global legal pluralism is characterised by a structural element referring to the variety of institutions, regulations and processes for resolution of conflicts which are registered and located in different spheres of the world, with a notable relational element between areas of a different nature with regard to the structure and the process (Boodman, 1991; Julios-Campuzano, 2007). Here we should not lose sight of the three types of levels which co-exist: local law, state law and global law. The latter takes the outward form of a super-State legality, which is very informal, and is based on the practices of the dominant economic players and which tends to constitute its own official nature by creating different forms of immunity. The action is expressed in a general manner, in the social part, and those scales do not act in an isolated fashion (Harrison, Morgan and Verkuil, 1997; Julios-Campuzano, 2007).

The Law in The Context of Sustainable Development

The idea refers to a State of reason or State of understanding which governs according to the general rational will and only seeks the best in a general way. It is based on the idea of a free and autonomous individual. The actions of the state have to be directed towards ensuring individual freedom and protecting the autonomous development of subjects. The state organization and its regulation have to be governed on rational principles, which can be transferred to the law as a basic element. As a result, this system tries to ensure that the State and its organs can only act in accordance with a faculty granted them by the legal system, by which they are thus limited. In this way, legislation applies to all on an equal basis and arbitrariness in public powers is proscribed (Böckenförde, 1993).

But at the present we have:

- The law has two basic types of regulations: the domestic and the international.
- The nation-states, societies and legal systems are largely isolated areas that can be analyzed separately
- The law and the theory of modern law are secular, apart from its historical and cultural roots in the Judeo-Christian tradition.
- The law of the modern state is rational-bureaucratic and instrumental, has a means to achieve social purposes and has sharp features.
- The law is more understandable if you look up and down. From this point of view, the view held by users or customers becomes secondary.
- The issues that form the core of a legal discipline are first ideas and norms, placing the empirical study of social facts in a secondary role.
- The law of the modern state is almost entirely a creation of the North, ie, of European and Anglo-American, which spans almost the entire world with phenomena such as colonialism, imperialism, trade and the postcolonial influences.
- The study of non-Western legal traditions is a secondary side and not entirely relevant.
- The fundamental values that are under the modern law are universal, even if the philosophical foundations are very diverse (Nelken and Feest, 2001; Twining, 2005; 2009).

In short, we have seen a dissolving of the nexus between democracy and the people, and between the decision-making powers and the rule of law, traditionally affected by the representation and by the primacy of the law and the policy which produces the legal norm. So, the question is whether there can be a democracy without a State, leading to a subsequent question, of whether it is feasible to talk, as we have done up till now, of a link between the State and law, or between the State and the Rule of Law (Teubner, 1997). Consequently, the crisis of the national State and the deficit of democracy and of the Rule of Law which characterises the new powers mean that we have to reconsider the functionality of the law and its different manifestations in the face of an absence of rules, limits and links which serve as guarantees for peace and human rights faced with new trans-national orders (Chayes and Chayes, 1995; Ferrajoli. 2004).

The birth of the new paradigms of law arises from the awareness that a monistic and monolithic context is not possible, when it is seen that new forms of law have emerged which are above and below the state. But one has to go further still, because the regulatory complexity of the systems in force transcends mere complication, and develops the notion of resourcefulness and criss-crossing of relations from one institutional level to another (Arnaud and Fariñas, 2006; Jenson and Sousa Santos, 2000). One of the new paradigms which should be mentioned is that of the logic of the flexibility which intends to generalise flexible logics. These flexible logics have different origins: the origin of some is strict traditionalism, which is the case of the objectives of the law, of the general principles, of the standards or of the democratic legitimacy.

And also, in an environment like the current one in which transformations synthesise an historic process of structural change, having a direct effect on the forms of organization and exercise of political power in the world, with sovereign States surviving with less actual autonomy and with legal powers in a functional crisis, the question we should ask ourselves is: what remains of the positive law constructed in accordance with the very rationality of modernity, systematised and arranged into legal structures whose principal characteristics are unity, plenitude and coherence? The State is seeing an ever greater reduction in its unitary authority as an active agent of production of law, acting as just one more framework together with many others (Sousa Santos, 2005; Tulchin and Bland, 2005).

In particular, globalisation presents an ideological reference to a social, economic, cultural and demographic process from which law cannot escape. From this perspective, and starting from the new relationship between the public and private spheres, what stand out are the relevance of deregulation as a reality and the need for the State to continue maintaining its functions, albeit renewed in accordance with the demands of the new scenario in which it operates. But the reality of law demonstrates a number of problems which need to be overcome through a new understanding of globalisation and the implementation of new legal techniques and formulations (Appadurai, 2001; Reich, 1998).

More in particular, the absence of the complete delimitation of a concept's extension and the semantic indecisiveness seems, within these limits, unyielding, discerning that a text's clarity or darkness is not just relative to its expository context, but also to what we call application context, or nature of the situations to which they are intended to be applied. In a material way, we are moving in the debate between imperativist thesis of the legal rules which envisage law from the angle of power, and the anti-imperativist ones, which envisage law from freedom. Formally, the legal norm shows a meaning with linguistic signals which must be interpreted in accordance with a logic structure. However, we cannot forget that law is a cultural fact, deriving from human life, taking into account that human acts are integrated, as far as rules are concerned, in relation with certain values (Soriano, 1993).

The law, as a complex institution, is made up of regulations and techniques, of practices and ideologies. They all have to do with those functions of the law which have to be developed if society wants to survive and attempt to achieve justice. If society, or any type of association, wants to survive and carry out its functions, it has to perform those listed below: a) problem-solving; b) preventive channelling of conducts and expectations; c) preventive re-channelling of conduct; d) the determination of authority and the establishment of procedures which designate the action as one which has authority; e) the organisation of society as a whole, to guarantee integration, management and incentives; and f) the juristic method as a manifestation which synthesises the task of handling the legal instruments so that they contribute to achieving the objectives of law (Llewellyn, 1940).

Some Criteria for Achieve A Sustainable Development Through Law And Regulatory Dimensions

Criteria

This issue is essentially a national issue, this autonomy should be taken to mean the convergence of the private autonomies along a line of common interest, reached by agreement in a process of contractualisation of rights and obligations. National laws come second to the internal regulations set up by the family group and in force within the privacy of the sustainable development in the society. The former only comes into play in the face of danger or inability to guarantee society objectives. Law contains indispensable regulations governing public order and the common good.

The State intervenes along basic lines to the extent that it is in its interests to preserve the sustainable development. Regulations can be seen as a system providing incentives that have a decisive effect on future actions, although it is law itself that sets down the content and specific scope and effects of the legal relationship (Garrido, 2000). Any agreement reached from the autonomous will of the parties must necessarily adapt to the limitations set down under the legal system, in that legal powers arising out of legal relationships are deemed instrumental and are attributed in order to ensure the purposes provided for under that legal system and this cannot be left up to the independent criteria of individual citizens. The degree of difficulty arises from the fact that individuals have very strong ethics which rely on moralistic and ideological issues, on religion, tradition and a value system.

The purpose of this essay is to highlight the fact that certain specific governing or guideline criteria are in fact necessary before one can establish cases in which it would be admissible to treat the genders unequally. Those criteria, insofar as women's rights are concerned, consist of the need to overcome a situation of inequality which arises due to cultural and social reasons. An analysis of the different types of feminist movements follows, concluding that feminism implies two types of hypotheses. On one level feminism can be said to be a theory for equality; on another level it is a theory which turns around the objectivity of Law, although it does, in both cases, challenge classical political and judicial theses.

The criteria of relevance which should prevail when adopting any type of measure specifically rendering fundamental rights must consist in respect for individual autonomy and meeting basic needs in so far as morality is concerned. There is a third aspect to consider alongside those two and which De Asís describes as the insistence on considering rights as the outcome of bringing together different demands having to do with realising lifetime achievements (Asís, 2001). Determining which criteria are relevant when it comes to establishing sustainable development is in essence axiological in that it implies making value judgments with legal regulations serving as the vehicle for and expression of those judgments.

Regulatory dimensions

The asymmetry of the all legal families is great. R. David makes a classification based on both the technique and conception of the social order, that is: the Roman-Germanic family, that of Common law, that of Socialist laws, and other type gathering Muslim, Indian, Jewish, the Far East's and the Black Africa's Laws. Between the first two, there is a different Law concept and a lack of technical similarity in the legal production and application, although it is true that differences have been reduced thanks to a reciprocal knowledge, to which the integration of Great Britain into the Council of Europe and the European Union has contributed. Putting special emphasis on what we have said, Pizzorusso highlights the fact that the survival of reciprocally independent, or dependent systems is the assumption of any comparatist investigation. The simultaneous comparison forms a central nucleus, and the demand of being to the point makes us grasp the message of the legal provisions together with its efficient application, what makes us connect with the Legal Dogmatic and prepare the way to the creating the General Theory of Law (Losano, 1982; Pizzorusso, 1987).

Legal systems are the expression of the current culture. As an illustrative example, we talk about a "Western Culture", which implies a specific dimension, the settlement of a law gathering a society's fundamental values. Or we talk about a "European Culture", that goes round the idea of social, economic, political and, obviously, legal balance. If we analyse the relation between the European Law and the law of Member States as far as systems are concerned, according to Arnaud, there is a "simultaneous polysystemy", or coexistence within the same space and time of different current systems. The comparison may result in an equality, similarity or identity of legal reasons, thus, it is clear that the reason of legal systems may be divergent, with a mere formal or material divergence. The proposal would be to create a law which could gather a new legal reason, as the result of the reasons of the Member States' laws, within a coexistence spirit derived from a cultural coalition will. So, it is necessary to stress the fact

that the intelligibility of a system joins the discovery of its rationality, and the fact that if the legal reasons they lean on, are able to coexist, converging in the dynamic of rule production and proposing a modelling scheme of creation processes of the rules which harmonizes the complexity area (Arnaud, 1991; Arnaud and Fariñas, 1996; Delmas-Marty, 1989).

The complexity shows that can be seen in the role played within the traditional decision-making powers governed by rules of exclusive and excluding competences. To this scheme can be added civil society and international bodies which create and strengthen new relations (Garrido, 2010). Insofar as the Member States of the European Union are concerned, some legal regulations have been set down by legal orders making provisions for the social interest surrounding the sustainable development. The globalization of law has two main regulatory dimensions: the degree to which the world is subject to a set of legal rules, and reference to the certainty that human relationships are governed by law everywhere in the world. Legal rules undergo conversion into obsessive-compulsive rules and become a system that legitimates itself based on its inherently self-generating nature. In addition, the initial concept of legal relations and their components are transformed into a techno-legal order under the influence of a new technical focus. Thus, a new order emerges, characterized by the formation of networks that imply that the globalization of law must centre around commercial and Contract law, Public law, protecting human rights and also the growing importance of lawyers, together with the dissemination of contents and legal procedures. All three of these mean that the regulatory authority of the State with respect to these areas is unlimited, although States can decide whether to participate or else to withdraw. In this state of affairs, linear systematicity is forgotten in order to implement a circular system, surpassed by the specification of new concepts.

In this work there is an interdisciplinary and plural concept of what the term globalization means. In particular, globalization presents a reference to a social, economic, cultural and demographic process from which law cannot escape. From this perspective, and starting from the new relationship between the public and private spheres, what stand out are the relevance of deregulation as a reality and the need for the State to continue maintaining its functions, albeit renewed in accordance with the demands of the new scenario in which it operates. But the reality of law demonstrates a number of problems which need to be overcome through a new understanding of globalization and the implementation of new legal techniques and formulations. There are more and more political communities that act as interpreters; there is a new perception of reality. In the same way, there is a contrast with manipulation and marginalization, and the use of new domains of emancipation is pursued. Radical needs are a result of daily emancipatory practice, which is why the method itself is based on radical subjectivity. We need a new theory of subjectivity that shows that we are before a complex network of growing subjectivities. The growth of the market makes the role of altruistic actions less important, and may make it become the setting for capitalist production (Sousa Santos, 2005).

We have to mark out is to find a legal-political method of inclusion and integration in which the rules of the game are established and must be complied with, considering how we should value difference and identity, how they should be married with equality, what is the route to obtaining mutual and equal respect between all the cultural groups, and where we should situate the point of cohesion in a socio-political context (Brysk, 2002; Chiba, 1998). The new form of homogenisation implemented by globalisation supposes the interested use of the legal principle of formal equality, the sense in which legal universalism and the discourse of liberal and individual laws serve to provide a foundation for formal legitimacy (Fariñas, 2002; Gill, 1998).

In general, the Logic of the programme of analytical investigation which is used by the comparatist seems to be the same as that of the logical-deontical applications to the legal science, with the difference that instead of formalising a normative language, some linguistic uses are analysed as a way of facing linguistic problems. Contemporarily, we cannot obviate the New Dogmatic born in a peculiar socio-economic framework, presented as Logic of the active and productive investigation. Those in favour of the non formalist stream consider the legal reasoning in a place within the rational field, and so they reject the logic label, they devalue it, or even reject it by creating a new sense. For instance, Perelman keeps the Logic qualification for the jurists reasoning, although being far from the formal one, and he insists that such reasoning is not developed in the irrational world. Other authors such as Recaséns Siches, talk about the vital, material or reasonable Logic (Klug, 1990; Wright, 1979. Perelman, 1988; Perelman and Olbrechts-Tyteca, 1994; Recaséns, 1971). For this reason, the general principles of law carry out a relevant function, they represent a more general normative condition than that of the articulation of both Codes and laws, with a structure imposing that every legal act should be implemented with regard to their inherent value. Concisely, these principles and values are not different if we consider their efficiency, although they have a prescriptive power which do not coincide, it establishes that the former principles carry out a normative function *per se* and the latter work as axiological models. Thus the functions of the general principles would be to support the legal system, to be an

interpretative prescription and a supplementary source with direct justice consideration. In the scope of the harmonization of legal systems, it is worth highlighting the common principles and the rules' efficiency (Dworkin, 1999; Beladíez, 1994).

On the other hand, from the categories we have based on, the concepts and the system are the ones which clearly define the cognitive model. The concepts fulfil a function in which the subject's contribution is the priority; and the system gathers the rules, relations, institutions and concepts, focusing on the operated activity, the systematic study of a legal system and thus creating, a conceptual scheme (Kerchove and Ost, 1997; Luhmann, 1983; Ost and Kerchove, 2002). If we go the activity and functionality of Comparative law in any depth, we observe that its connection with the legal Dogmatic and Law's General Theory is featured by the abstraction perspective in accordance with the considered systems. The direction goes from the Dogmatic to the General Theory, through Comparative law, thus within the legal systems' harmonization process the action of the Dogmatic is essential, and it basically considered as the theoretical elucidation of rules, so as to create dogmatic models at the expense of normative models created by the legislator.

In conclusion, the General Theory provides Comparative law with the concept of Law and the fundamental concepts immediately derived from it; the logical structure of the legal rule; the theory of both legislation and decision, with all the complexity reflected in the argumentation subject; the interpretation of Law and the logical process of application; the relations between Law and Logic, and the possibility of a Legal Logic. Some people think that they also have to focus on Law's social function, that is, how to reach the goals that Law has to achieve in any civilised society if it does not want to remain as dead words. Thus, the General Theory is a conceptual elaboration wider than that of Comparative Law. Being its culmination, they cannot be quantitatively distinguished, their autonomy is just functional. The jurist from the Dogmatic point of view, takes Law's pure concepts to the legal material, provides them with the shape of a scientific object and, at the same time, enriches their content when connecting them to the immediate reality (Arnaud and Fariñas, 2006; Bobbio, 1998).

The Role Of Judges For Improve The Sustainable Development

Legal systems are characterised by their organisational sense in accordance with a series of functional types. Jurisdiction allows for different interpretations depending on the position adopted. Subjectively, it means the set of organs involved in the process; objectively, it is made up of the set of procedural matters covered and, at the present time, its hallmarks refer to the acts performed by the agencies involved. But, when speaking of this term, it is advisable to go beyond these partial meanings and refer to a more extensive idea, that of function, dismissing the general notion referring to the work done by any body, or group of bodies, within their respective powers. More correctly, we define the jurisdictional function carried out from a subjective legal perspective as the activity of the State to provide protection for legitimate rights and interests and the restoration of those threatened or harmed. From an objective standpoint, the jurisdictional function consists of exercising and safeguarding positive law. And, sociologically, this means the coercive resolution of social conflicts (González Montes, 1989; Andrés Ibáñez, 2006; Cadiet, 1997).

Hence a distinction must also be made between the functional question of judging and the structural question. The former refers to what judging is for and it is answered in accordance with the theses on the creative function of judicial institutions; the structural sphere, however, raises the question of where the judging function takes place, and is explained by reference to the venues where the trials are held. These two crucial questions are in addition to the idea from the realm of ontology corresponding to the question of what judging means (Pérez Luño, 2011).

Therefore, the next question is to specify which function judges really perform and what degree of participation they have in creating law in order to carry out actions that have an impact on addressing general interests. To answer this question, it is necessary to reflect on whether the intelligibility of a system is combined with the discovery of its rationality and whether the legal reasons employed are capable of co-existing with each other; both answers converge on the dynamic for the production of regulations. The absence of a complete delimitation of a concept's scope and semantic ambiguity seem intractable; it can be seen that the clarity or otherwise of a text has to do with the context in which it is set out and the context in which it is to be applied. Materially, in this debate we are moving between imperativist theses that contemplate law from the power angle and anti-imperativist theses that contemplate it from a standpoint of freedom (Soriano, 1993).

From this understanding, in democratic States legislation is the legal instrument responsible for introducing changes in laws, thus reflecting or guiding social change. In the judicial arena, interpretation allows some margin to introduce changes within what the system allows (Atienza, 2003; Martín Pallín, 2010). The mutations undergone by

the model for the application of the law break with the concept of strict formalism by creating spaces related to strategies and purposes that have nothing to do with legal matters, such as social, economic and political issues, among others (Picontó, 2000). From this perspective, the main handicap often lies in the fact that judges accumulate technical legal knowledge without adapting to the new realities thrown up by society, so they cannot give answers to the real requests citizens are making (Zagrebelsky, 2011).

In this respect, several reasons can explain the expansion of judges' powers, including those mentioned by J. Malem: the complexity of the modern world is gradually growing, thus causing an increase in individual and social conflictivity. Similarly, some legislation is based on general principles and is the result of political consensus, thus requiring fundamentally judicial institutional decisions; there is also a process of judicialization affecting the country's political life; and the judiciary is the final recourse for the protection of citizens' rights (Malem, 2008; Ansolabehere, 2005; Dworkin, 1985; Taruffo, 2011).

The most striking thing is the large number of lawsuits and the insufficiency of the human and material resources available, including financial ones, and it is therefore vital to increase the provision of personnel and material means in order to cope with the sheer volume of cases. In addition, the judicial system can be described as obsolete, complicated and unsatisfactory, thus hampering the effective protection of all citizens. At present, in many legal systems, it is evident that the rite or established procedure is inadequate for the substantive reality of the process, in so far as this is related to its raison d'être and the current constitutional reality, materialised in a system of guarantees (Lorca, 1989; Moley and Wallace, 2004).

The two causes cited above mean that the actions of the judicial bodies cause a certain discontent for obtain a sustainable development. That is, on the one hand, with regard to the capacity of the judicial machinery to handle matters swiftly and efficiently, and, on the other hand, with regard to its ability to adequately resolve them. However, often the solutions put forward are based more on a widespread stereotype than direct knowledge, to which must be added the fact that it is an institution whose output it is difficult to evaluate using objective criteria. What everyone expects from judges is that they should be fair and impartial, by which they mean that they should rule in their favour and do so quickly (Toharia, 1987).

In line with this assertion, the jurisdiction represents a rationalising activity aimed at the holders of the right to that jurisdiction, it being of particular importance who it corresponds to have the final word with regard to the law, which is linked to the sovereignty and the origin of the system (Strier,1996). Therefore, it must be taken into account that, when it comes to considering whether judicial decisions are predictable, the complexity grows and some confusion is created because the connection models are very diverse, involving responses which are likewise different depending on the relation between judges and the social and political sphere. Hence, it can be seen that, in each model, judicial discretionality acts with greater or lesser intensity. This raises problems in relation to judicial certainty and, more broadly, in relation to security. Really, security is increasingly no longer contemplated as a value in conflict with justice and it has come to be observed as a series of ethical dimensions which would form part of formal justice (Rodríguez-Toubes, 2000). There is therefore no doubt that the security requirements of the law are an ideal means of guaranteeing the respect of some values whose realization is deemed vital for the achievement of a just social order. Thus, the security requirements of the law make it possible to create some of the bases of freedom. A judicial order structured in accordance with these requirements introduces clear, fixed and predictable criteria into the sphere of public and private relations, which makes it possible to exercise personal initiative and freedom with confidence.

Having analysed the above aspects, we obtain the ideas that the judicial interest is based on a connection with judicial concepts supporting subjective rights and obligations. The reasons to consider it judicially relevant are a series of ethical, cultural, social, political, economic, spatial or time factors, whose evaluation is characterised by its mutability (Añón and García Añon, 2002).

Together with the previous question, it is necessary to materialise the ideal of a judge who has more reasons underpinning his/her decisions than the fulfilment of his/her duty. This requires the explanation and justification of the decisions he/she takes, which means that the reasons leading him/her to decide coincide with the reasoning of the decision (Aguiló, 2009; Newmann, 2002). For this reason, the judge, responsible for judging and ensuring that that judgement is enforced, must possess, in addition to good theoretical training, a series of qualities which maintain a perfect balance between authority, understanding and prudence, in order to be a good instrument of pacification. This is deduced from the fact that, because we start from the idea of interchange or those of equality, legality, proportion, peace and order, the final decision must objectively harmonise the aspects of the litigation, resolving a conflict and re-establishing the disrupted legal order. Therefore, we require a figure guaranteed by a statute of

competency and adequacy, permanence, social estimation and impartiality, who is aware of the primacy of his/her responsibility. Apart from the fact that this figure must act adapting to the idea of independence and responsibility; a judicial power which administers justice implies that there are no interferences or restraints in the exercise of its function. Independence is a reason to assume the responsibility of one's own acts, whether it be criminal, civil, disciplinary or financial, as this position can never ensure functional perfection or even infallibility.

Consequently, the dilemma with regard to the social function which judges must perform is inextricably linked to the ideal which its organisation should inspire, how the State should be configured, organised and managed; what judges should do, what the best type of action is; what the principles are which should inspire them and in the light of which that social function is justified. There are three basic positions from which we can address the issue which concerns us in the present article: sociological, legal and ethical, each one of which offers us theses with their specific contents of aims, norms or values which seek to typify it, or conceive of it as a function which has a special quality (Strier, 1996).

Thus, if the law has a control or motivation function, what we must focus on is the way in which it is exercised and real satisfaction. If it does not, we will conclude that the regulatory systems are irrelevant in the regulation of social relations. In this way, the nature of the law as a means of motivation and control can be contemplated in accordance with the relations between the norms, the reasons to act and practical reasoning (Rodríguez-Toubes, 2000). From this legalistic perspective, the road to follow is for the legislative powers to be assigned to the State, offering a framework which enables the jurist to classify its actions and receive clear instructions on future operations, conferring a philosophical and anthropological legitimation which corresponds to a reflection about justice and the principles of law. In this regard, we must not forget that predictability guarantees the members of society the possibility of predicting the actions of the powers and calculating their own actions, favouring the free choice of life projects and plans (Guasp, 1971; Añón and García Añon, 2002).

However, whichever line is followed, the judicial activity must be understood as a social formation organised in some way, which has certain structural features and which is established based on the changes occurring in the society which it serves. Coherently, what is important is that justice must be delivered in society. The purpose of judicial activity must be to establish a social order which creates the conditions necessary for personal and collective development. The function of judges will therefore consist of moulding society through the regulatory or institutional elements they have to hand (Aguiló, 2009; Newmann, 2002).

Conclusion

Changes in law have been both material and formal. In the substantive field, privatization and transnationalization are worthy of note, while the formal level offers proceduralization and the crisis in the pyramidal conception of legal systems. This is manifested by the mercantilization of every aspect of social life in line with its legal de-regulation (Estévez, 2006). Regulatory networks are driven by the revolution in information technology, with the liberalization of financial markets having created, in its turn, a system consisting of networks of States, companies, citizens' organizations, ethnic groups, etc. Similarly, a system has been created to network public and private banks and financial corporations with associations playing regulatory roles.

On the other hand, regarding the relationship between legal systems, there is a constant interaction between rules from different systems blurring the boundaries between the internal and the external. It is precisely in this plane that we should emphasize the change in the prevalence of the Constitution over other legal norms, since, while Constitutions continue to function as the ultimate source of national legal systems, they have been opened up to recognize other systems. This is illustrated in some places by the recognition given to international human rights treaties at the same level as constitutional provisions. Thus, Constitutions must undergo a test of their legitimacy threshold (Sanchez Cordero, 2004).

What emerges from this is that we find ourselves facing high levels of legal uncertainty since there is no power controlling and arbitrating as it did in the past. In fact, the idea of legal certainty arises as the result of awareness of the importance of law itself being a secure quantity, as a means to avoid harm to the freedoms and dignity of those subject to law. The traditional legal system allowed its recipients (citizens and legal practitioners) to know what to expect on the basis of principles such as public notice, clarity or non-retroactive application, which set out how to create, express or apply legal norms. This is, therefore, a guarantee for individuals vis-à-vis the law achieved through the law itself.

And also, in an environment like the current one in which transformations synthesise an historic process of structural change, having a direct effect on the forms of organization and exercise of political power in the world,

with sovereign States surviving with less actual autonomy and with legal powers in a functional crisis, the question we should ask ourselves is: what remains of the positive law constructed in accordance with the very rationality of modernity, systematised and arranged into legal structures whose principal characteristics are unity, plenitude and coherence? The State is seeing an ever greater reduction in its unitary authority as an active agent of production of law, acting as just one more framework together with many others (Sousa Santos, 2005; Tulchin and Bland, 2005).

From this point of view, the objective which, as I see it, we have to mark out is to find a legal-political method of inclusion and integration in which the rules of the game are established and must be complied with, considering how we should value difference and identity, how they should be married with equality, what is the route to obtaining mutual and equal respect between all the cultural groups, and where we should situate the point of cohesion in a socio-political context (Brysk, 2002; Chiba, 1998). As Fariñas believes, the new form of homogenization implemented by globalization supposes the interested use of the legal principle of formal equality, the sense in which legal universalism and the discourse of liberal and individual laws serve to provide a foundation for formal legitimacy (Fariñas, 2002; Gill, 1998).

In short, to be able to overcome these serious problems, the objective I think we have to set ourselves is to find a model of global law which is able to carry out an alternative project (Brysk, 2002**)** to the globalization which we are seeing today. And that, I think, can only be achieved through the discussion of human rights focussed on the commitment of a cosmopolitan democracy.

The fact is that, really, the unitary behaviour of the public sphere in opposition to the diversity of private interests and of the progressive increase which has affected economic decisions taken outside the scope of functional jurisdiction and its territorial borders leaves behind its centrality and exclusiveness. It seems evident that the Constitution, conceived as the fundamental and basic regulation, has progressively lost its strength and effectiveness, and the legal structures have become, rather, mechanisms of coordination, of adaptation of interests and pragmatic adjustments. This is in tune with the fact that the State has lost the monopoly of economic management, political administration, social control and legislative initiative (Páramo, 1993).

Coherently, deregulation has become the note which best characterises the law belonging to globalisation, which is one of its principal expressions, identifying itself with the displacement of interventionist regulations for others which are restricted to ensuring private autonomy and free competition between subjects acting within the market. As a whole, deregulation does not mean a situation of anomie, but is identified with a situation of replacement of an interventionist legislation by regulations with an abstentionist feel and with tolerance or cooperation with private regulatory initiatives (Derthick and Quirk, 1985; Marcilla, 2005a). In this way, we refer to the retraction of standards of public law which are designed for social, employment protection, etc., to the benefit of Private law regulations and laws for self-regulation of large companies (Marcilla, 2008).

The example which best demonstrates this is that of the lex mercatoria within the trans-national plane. The aforementioned formula produces positive aspects for private economic subjects, with the most notable being the weakening of participation and representation in conditions of equality. From this point of view, deregulation can be seen as an expression of legal pluralism, but, if we consider it on the philosophical-political plane, the link comes with the neo-liberal project and the practice of privatisation of public services. However, apart from these two possibilities, it can be considered in the scope of Administrative law as regulated self-regulation. This would represent an example within the genre of deregulation consisting of tolerance by the public authorities of regulations created in the private sphere, but with these regulations designed to meet ends of general interest. With this view, regulated self-regulation is characteristic of cooperation between the State and private economic subjects, the purpose of which is the most effective and efficient compliance with general interests (Dasser, 2001; De Ly, 2001; Marcilla, 2005b).

The State must ensure and promote the initiative of the people and the exercise of its rights and duties, completing or substituting them should there be any partial or total impossibility, or should the legal obligations not be adequately met. It is clear that the Public Administration is mainly responsible for creating social policy in Europe, however, for some time, the growing needs and the disparity of resources in a globalized, yet fragmented world, where the ways of life are very different, lead to significant changes, considering solidarity and equality principles valued according to the degree of freedom they present, promoting family participation and association in social aspects which affect them, both as subjects of primary services and as active, transactional subjects (Donati, 1990). Under these guidelines, a new legal-political model in which the family would continue to receive assistance gains strength, but it´s implication in the development of the public sector would be significantly greater, differentiating and balancing all concurrent types of cooperation, with the aim of securing an harmonizing formula.

In short, we draw the conclusion that the actions of the State which we have set out should be modernized and improved constantly, because, given the growing scarcity of many goods and having achieved universal social rights, in many cases the demands are excessive and impossible to meet; and, given the problems that arise when determining the individual who is entitled to State´s action, the decision-making becomes increasingly more complicated. Beyond the forms of current legal-political actions, the issues that ought to be considered in order to improve the effectiveness of the adopted measures are: the ascertainment of an order of priority that reconciles the scarcity of resources with the most serious problems; optimization regarding the combination of public and private funds; simplification of the procedures; clarification of the responsibilities of each party, increasing participation at regional and local levels, involving social interlocuters and maintaining flexibility to respond to new situations (Donati, 1990). Finally, we recommend the progression from an analytic model to a systematic one that reaches a more appropriate and satisfactory solution, by applying a series of factors that transform those known until now.

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