

PRELIMINARY NOTE

The problems of the rule of law have been discussed for a long time. Experience shows that new solutions are in turn accompanied by new unknowns. The rule of law is one of the most complex issues facing the theory of the constitution, precisely because it supposes a dynamic relationship between two polyhedral concepts: state and law. Regardless of the doctrinal conceptions that identify or differentiate these concepts, even if only as an object of study, the separate dissection of both is carried out in all the methodological currents of constitutional theory.

The historical and cultural fact that can be demonstrated is that there is no unambiguous concept of the rule of law, although there are elements that, in certain circumstances, present homogeneous expressions. As a technique of domination, the rule of law becomes a set of rules that backbone the legal argument of each state. The invocation of the rule of law is as familiar in autocracies as in democracies, both because it provides arguments for the exercise of coercion and because it offers elements for the defense of freedoms. From the cultural and historical horizon, the rule of law is an amphibological concept that has proven its functionality to support diametrically opposed constitutional structures. Within democratic constitutionalism, the rule of law acquires its own characteristics. The type of state implies the type of rule of law, for this reason, in a tendency, democratic constitutional states are incorporating common elements that characterize the rule of law. In the authoritarian state, power obeys its own rules, which include wide margins of discretion. There is, therefore, no certainty of their rights for the recipients of the

norm; the possible reactions of power are not foreseeable and legal certainty becomes intangible. Of course, the degrees that this volatile situation can reach vary according to the severity assumed at each moment by the holders of power in that type of state. In the democratic constitutional state, on the other hand, there is certainty in relations with power; the decisions of the organs of power are always predictable and legal certainty is a general guarantee for fundamental rights. Everything indicates that the democratic nature of the constitutional state is what gives a meaning and content to the rule of law. But insofar as the constitutional state in turn presents many variants, the problems of the rule of law multiply.

In this study I have grouped three essays in which I examine three questions concerning the rule of law, which in turn raise numerous constitutional problems: the non-application of norms in the rule of law; the constitutional regime of tolerance, and the relationship between the electoral system and the rule of law. The three works were previously published, as indicated in each case. I clarify, however, that the versions collected here present changes in relation to the originals, product of adjustments that I consider necessary for the greater clarity of the text or for the expansion of some arguments; these changes are due, in several cases, to the suggestions and comments of some colleagues. These modifications, however, do not alter the meaning of the previous statements. For this reason, even when these variants exist, I kept the references to the original publication that appear at the beginning of each text.