

Evolutionary scale of Peruvian law from the state of nature to the state of justice

Opinion

Throughout history, one of the most important issues is the administration of justice. It involves guaranteeing a society, with the full enjoyment of the fundamental rights to peace and tranquility. The search, scope and proper administration of justice is constituted by antonomasia in the concern and occupation of the first order as in historical mass cry, from almost the very appearance of the human being on the planet. In this sense, we consider that justice involves stages or stages such as:

- i) State of nature,
- ii) Rule of law,
- iii) Constitutional law,
- iv) Conventional law,
- v) State restorer of law and
- vi) State of Justice

In this regard, we consider that they correspond to a sort of “other waves”, that is, those of Peruvian law. This is due to its relation to the enumerative character that evokes the already named Fourth Wave;¹ which is characterized basically by artificial intelligence and the interface between nanotechnology and synthetic biology. By the way, it is worth remembering about the previous three waves, that the first was characterized by agricultural revolution, the second, by the industrial revolution, and the third, by the information and technological development that ended up leaving the hands to both the locals and strangers. In this order of ideas, as referred to in the previous paragraph, the other fourth wave would be the law-restoring State. It should be mentioned, a priori, that to date we are going through the third of the aforementioned, that is, the constitutional State of law (to the detriment and postponement of the current state of law). Entering already in matter of bottom of the development of the present work corresponds to occupy to us precisely of the development of the mentioned stages. So, we have: The first other wave would be the State of nature, also called private revenge or private justice (justice by one’s own hand, eye for an eye...), that characterized by justice done by the hand of the affected party. The second, another wave, would become the rule of law, in which, it is the law (and not the people) that takes the reins of the administration and organization of power. Specifically, it is the Law that has the respective protagonism. We estimate that the third other Wave is the one where the Law no longer mandates, but the Constitution, generating that all the regulatory apparatus of a State, align or register unavoidably in tune with the provisions of the Political Constitution. It is called: Constitutional State of law (in which the binding precedents of the Constitutional Court made their appearance). Incidentally, it is convenient to reiterate that the present other Wave, is the one that currently governs us and we are.

Likewise, we point out that the other fourth wave, called:

¹Garrido Koechlin, Juan José. *La cuarta ola*. En línea: Recuperado en fecha 23/06/19, de Diario Peru21 Lima.

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Conventional legal status, in which the legal systems of the signatory countries of the American Convention on Human Rights, will observe what is prescribed in it, as a scope of greater protection to the Fundamental rights, even more than the Political Constitution. Then, the other fifth wave, involves the restorative State of justice, is characterized by strengthening or humanizing the mandates of the Constitution, that is, in light of what is prescribed by the Restorative Justice. That is, to ensure that the eventual violation of fundamental rights is duly compensated, restored, rebuilt, restored. The present phase would be the one that eventually, in a short time, we would arrive. We point out that in a uniform manner, the precepts of restorative justice are assumed and applied, with only criminal and procedural penal orientation. However, in accordance with what was developed and demonstrated in the previous submission (“Restorative justice is only applicable in criminal courts”), we maintain that restorative justice, in as much as it is in accordance with the postulates contained in the Political Constitution, as corresponds to a Constitutional State of Law; it must also apply to all branches of law. The other sixth wave (which we consider the definitive), would turn out to be the so-called State of justice. This stage would be doomed to the total landing in the justice proper, the only one of must exist. Then, in this phase there will be no room for unsuccessful and erroneous appeals, such as: “private justice”, “legal justice”, “constitutional justice” or “restorative justice”. After having briefly explained the evolution of the aforementioned stages of the law, we note that these phases of evolution would not only be in accordance with Peruvian law, but also that of a number of sister countries -except, for example, the case of Brazil, in the that without having passed through the phase of the constitutional State of law, it is going through a different one, called “Democratic State of Law”, comparable to a State of law. Even, it is worth mentioning that it currently transits with a marked tendency to enter the stage of the restoration State of law. Consequently, its evolutionary sequence would be:

- I. State of nature,
- II. Democratic State of Law,
- III. Restorative State of Law,

IV. Constitutional State of Law,

V. Conventional State of Law and

VI. State of Justice.

Next, strike on purpose, take care to respond to the basilar questions that fall on purpose mature: i) Why so alien and erratic can be and is the evolution of yore?, ii) Why it has or can take so long time to achieve what is supposedly sought and must be sought, that is, a State of justice?, and Why do the people have to suffer so much to finally embrace the longed for justice, proper only of a State of justice?. As a prelude to the response to them, we must specify that we do not intend to deny the nature of what an evolution seizes, that is, in no way can arrive at the end of it without going through the stages that the corresponding one (it is not automatic), in this case, the one that concerns us. In that order of thought, we can rehearse a resolution to them, blaming reasons of a nature of our Latin DNA. Thus, analyzing thoroughly (or perhaps, really thoroughly), we have to point out that this inability to reflect that characterizes us as Westerners is not the product of chance, but of causality. Thus, we have to take into account that as Peruvians (for example) we present immense fractures, since we did not have the ages of “rebirth” or “illustration” (we jump with pole vault from the old to the modern age). In this sense, we lack the ability to rethink, reflect, relearn to think from itself and its environment -or simply to be reborn-, as well as the loss of faith in all kinds of dogmas; that the Renaissance granted to Europe in the eleventh and fifteenth centuries. That is the explanation of our great tara. To these fractures we have to add (in words the outstanding *jusfilósofo* and great teacher Juan Carlos Valdivia Cano, in his revealing and acute essay “the disease of love”) the fact that we are mestizos made or resulting from a kind of *tutifrutti* of a native culture (Inca), Christian morality, Roman institutions of power (Parliament, Judicial Power), and Greek mental structure; and Greek is or means (among other things) Platonic. What gives us the tendency to define things by their objective or ideal and not by what they effectively or completely or completely comprehensive, are (for example: when our Western culture defines the word love idealistically (only and unanimously as something, noble, sublime and wonderful) - platonic love - and not for what it really is in its entirety, so forget about jealousy, betrayal, boredom, lies, power, disagreement, slapping, scandal, hatred, death ...). Our culture does not understand that finally love is a chronological problem, it is only a matter of time. Love is a chronic disease (it is not that lovers are ill, but that Eros is itself.), and so, sooner or later (jealousy always diligent decipher the disappointing signs of love) the lover will taste the vinegary flavor of lucidity (This lucidity is paved with disappointments).

Someone will say, is not there or is there pure love (or just the beautiful part)? (That love I am looking for, they affirm frequently not few). Fernando Savater responds in the affirmative, but he says

that only the love of King Kong (the tallest, the greatest, who expects everything and gives everything - for nothing - unique and “true” love that only appeared on the big screen), So, not to be Platonic is to go beyond Plato, then, is to accept that the Danube is not blue, it is dirty, brown, water with mud and oil (to say the least). Therefore, Valdivia Cano also considers that in matters of love, better placed than Plato is Zarathustra (“love: in the media, war, and in the end, eternal hatred between the sexes”). Then, in light of the shortcomings² Western and Peruvian reviewed, strike quote Ortega y Gasset (“man is not such, but he and his circumstances”) to take into account that everything that happened to us as a culture, resulted in what was indicated and what is not can save or ignore just like that.³ Finally, we note that we only propose a term as an example, apparently simple (love), with which we could see the disastrous “problem” that unchained (platonic love); So, let’s imagine what happens when we investigate, discuss, analyze and “reflect” (we reiterate that reflection comes from being reborn /rethinking /learning from mistakes, that is, from the learning granted by the European Renaissance period, the same as We had), “about legal issues such as, for example, the present issue in which we briefly address the stages of the evolution of Peruvian law.

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Conflicts of interest

The author declares that there are no conflicts of interest.

²Carencias (de edades) y fracturas (culturales) que también pueden ser investigadas y analizadas por los ciudadanos de cada Estado o país occidental, respecto de su caso concreto; a efectos de poder realmente entender su propia naturaleza y acceder a al estado de lucidez que refiere Juan Carlos Valdivia Cano; para luego, realizar lo propio al respecto.

³A propósito, no podemos dejar de resaltar que siempre es bueno o saludable conocerse realmente a si mismo (ya sea como persona, como ciudadano, como nacional o como parte de una cultura). Sea cual fuere a la conclusión o verdad a la que arribemos. La verdad (simplemente), por cruda que sea, no mata, solo aturde un poco; pero luego, a partir de ella, podemos efectivamente empezar a ir en busca de nuestra propia solución o evolución. Así, acertadamente se sentencia “conócete, acéptate y supérate” y “para saber dónde dirigirte, primero debes tener conocimiento acerca de dónde te encuentras”, además. En consecuencia, es falso como erróneo que alguien pretenda superarse sin previamente haberse conocido y aceptado, o que quiera ir o conseguir algo (la superación o el éxito, por ejemplo), sin tener la menor idea acerca de dónde y cómo se encuentra inicialmente.