Abstracts

Notas sobre la justicia constitucional desde la Filosofía del Derecho

Gregorio Peces-Barba

An approach towards constitutional justice from the Philosophy of Law requires two perspectives to be taken into consideration: the historical and the rational ones. This legal phenomena is belongs to modern times and, in this context, it falls into the framework of the dialectic between voluntary action and rationalism, constituting a serach for the limits of power in the great fight of modernity. The development of this philosophy of the limits of power, which is identified with the State in the modern world, has given rise to an objective dimension associated with the idea of the organisation of institutions and, in another subjective dimension, with the fundaments of the idea of human dignity that branches off into the diverse generations of human rights. The Constitution is the instrument that with bring this double dimension together. In order for this instrument to be protected, the systems of constitutional justice or control are expressed, one being of a type that is widespread in North America where it has appeared since the constitution of the Federal State; the other of a nature that was already concentrated in the European continent in the XX century.

La política de limitación del gasto público en España. Consideraciones sobre las Leyes de Estabilidad Presupuestaria

Javier Lasarte Álvarez y Francisco Adame Martínez

This paper is an analysis of the Budget Stability Act approuved in december 2001 by the Kingdom of Spain. This analysis studies the paths to reach the goals of budget stability in a descentralised state. The paper also studies their general principles and the specific laws targeting the different levels of government.

La función de los Parlamentos nacionales en la arquitectura europea

Manuel Delgado-Iribarren García-Campero

The Nice Treaty and its Declaration concerning the future of the European Union has opened up a debate about the changes necessary in the Union that will conclude in 2004 with the calling of a conference of representatives of the governments of the Member States with the aim of possibly amending the treaties. Among the themes to reflect on that are notably cited in the Declaration is the function of national Parliaments. The author of the work starts from this point in order to analyse the effects of the process of integration on the constitutional system of the Member States, in particular concerning the relations between the Government and the Parliament, between the State and the sub-state entities, and those deriving from the new demands of democratic legitimation of the community system.

The intervention of the national Parliaments in the European integration process is studied below. Going beyond the authorization for ratifying treaties it consists of everyday information and participation in community affairs, with the aim of reinforcing the democratic legitimation of the institutions of the Union. The solutions that are offered by the most significant experiences are examined, whether they are of an inter-parliamentary nature, such as the Conference on Specialized Organs on European Affairs (CSOEA), or of a domestic nature, such as the European Affairs Commissions created in the different Chambers.

Lastly, the author sets out the criteria which, in his opinion, could be used as the basis for the 2004 reform. The main options, being limited to those that may reasonably be considered by Governments, consist of significantly increasing the competences of the European Parliament and of the Commission to the detriment of the Council, or if the latter maintains its position as now, establishing channels of control and influence over its members by the respective national Parliaments. It does not seem to be foreseeable that the competences of Parliament and the Council are to be increased, so it is necessary to go deeper along the lines indicated in Maastrict, and sanctified in Amsterdam: the democratic legitimacy that the national Parliaments may endow the Council with lies within the internal scope of the States; the national Parliaments have to complement democratic legitimacy by means of control and influence over their respective ministries and the CSOEA does not need to be the main channel for national parliamentary participation, but rather to maintain its complementary nature.

Preautonomía, articulación territorial y vigencia del Estatuto de Castilla y León

Enrique Orduña Rebollo

Castille and Leon is the Spanish Autonomous Region that covers the most extensive area, having the greatest number of municipal districts and a low population density which is aged and receding in the rural population centres. Work, framed within the concept of the history of the present time, starts with a review of the background of the regional organisation of Castille and Leon from administrative, economic or geographical perspectives. From 1978, the autonomist process of this region starts with the establishment of the Pre-Autonomy Regime, but the problems of territorial expression commence simultaneously. Eleven provinces were initially convoked to constitute the Autonomous Region, but these later became nine, after a complex statutory process in which another two, Leon and Segovia, attempted to gain access to uni-provincial autonomy. The Statute of Autonomy was promulgated on February 25, 1983 and on March 1, another Organic Act determined the incorporation of Segovia within the scope of the terms of article 144 of the EC.

The appeals of unconstitutionality brought by these two provinces being settled, a new problem regarding the territorial structure arose with the County of Treviño, an enclave of Burgos in the province of Alava, which required a pronouncement by the Constitutional Court. The location of the headquarters of the political institutions of self-government was also complex within this territorial framework. This was resolved by the 13/1987 Act. In the subsequent years, the article refers to the regional regulations concerning territorial organisation: the Act Regulating the relationships between the Community of Castille and Leon and the local Entities (1986), the County of Bierzo Act (1991), the Act concerning transitory Town Planning measures (1997), the Territorial Arrangement Act (1998), the Local regime Act (1998).

The work concludes with a final reflection on what has been undertaken and a suggestion for reviewing the municipal map with the aim of achieving greater quality of services and standard of living for the citizens.

¿Tolerancia frente a la intolerancia? El respeto a los valores y principios democráticos como límite a la libertad de expresión

Alexandre H. Català i Bas

Does intolerance have a place in the State of Law? Tolerance towards intolerance? One of the serious problems that a democratic society has to face up

to is the outbreak of intolerance and this raises the problem of how to tackle such a situation.

Should the spreading of ideologies, political projects, messages, etc., that refute democratic values have to be permitted? Freedom of expression, as the European Court of Human Rights and the Constitutional Court declare is a key element of the democratic system makes the existence of pluralism possible. However, as with any other right, it is subject to limits. This work analyses the case law of the Strasbourg Court and that of the Constitutional Court based on the spreading of these types of ideas: the defence of national socialism, the denial of the holocaust, the defence of violence as a policy method, racism, xenophobia...

¿Hacia un nuevo concepto de poder constituyente?: La Constitución venezolana de 1999

Lolymar Hernández Camargo

A critical analysis, from the legal-constitutional perspective, of the Venezuelan constituent process that starts with the arrival of Hugo Chaves to the Presidency of the Republic and concludes with the promulgation of the Constitution of 1999. It describes the situation in Venezuela in 1998 in order to demonstrate that the change in the political model was a need felt throughout the whole society. The 1961 constitution contained mechanisms for its review but none of these were considered viable in drafting the new one. There was no provision in it for the calling of a constituent assembly, so in order to make this possible, without breaching the constitution, two alternatives were proposed: reforming it to include that possibility in it or, without modifying it, consulting the people about such a call as the holders of the sovereignty. The first option avails itself of the principle of the supremacy of the Constitution and the second of popular sovereignty. A comparison of both options makes it necessary to resort to an interpretation of constitutional principles made by the Supreme Court. The article analyses the actions of the public powers (the Supreme Court, the President of the Republic, the National Electoral Board and the National Constituent Assembly) from the perspective of their constitutionality, as well as the representative nature of the results of the Referendum on the calling of elections for the Constituent Assembly and the Referendum on approving the Constitution. Account is taken herein of the high level of abstention that took place in all of these consultations. The author concludes that the irregularities committed bring the legitimacy of the constituent process into question, which was accentuated by the lack of pluralism stemming from the low level of electoral participation.

Las obras públicas: su ejecución y financiación. Perspectivas actuales

Patricia Valcárcel Fernández

The work seeks to set forth a general vision about the revitalization that we are undergoing of the use of the means of private financing to tackle one of the most important public tasks: the provision of public works. After explaining the scope that public works have as a legal category and setting out the profile of what is understood by private financing of public works today, some of the reasons that have currently fostered interest in the same are set out. Likewise, an analysis of the diverse legal mechanisms that are being practised in Spain and by which the aim is to seek the consolidation of the assistance of the public sector in this requirement are detailed, and a small critical examination of the Project of Law concerning this issue that is passing through the parliamentary stage is dealt with.

Estudios

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ISSN 1138-2848

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DE ADMINISTRACIONES
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