THE BECOMING-OTHER OF LAW: PRELIMINARIES FOR A CITIZEN'S CONCEPTUALIZATION OF LAW

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ABSTRACT. The author's hypothesis is that modern legal theories view law solely from the standpoint of ruling class or, in Hartian language, from the external point of view. Why? In sume because legal philosophers have implicitly accepted law as the exclusive domain of government and partisan politics. This approach, however, has been disrupted by poststructuralist political developments, which serve as a powerful impetus to modify prevailing concepts. This analysis begins with Benjamin Arditi's idea regarding what he calls 'the becoming other of politics', an argument to radically change how the law is conceived. It then examines a very particular point of the theory proposed by the legal philosopher Herbert Hart, who distinguishes between the "external" and "internal" points of view with respect to how the rules of a legal system may be described or evaluated. In effect, Hart distinguishes between: (i) the *external* aspect, which is the independently observable fact that people tend to obey rules with regularity; and (ii) the *internal* aspect, which is the obligation felt by most individuals to follow the rules. It is from this latter "internal sense" that the law acquires its normative quality. Unfortunately, Hart only applies the internal point of view to government officials, in effect rendering his thesis inconsistent. The paper ends with a brief analysis of Dworkin's Herculean judge theory, arguing that Dworkin also gets trapped between the paradigm of government and partisan politics.

KEY WORDS: Post-liberal democracy, Benjamín Arditi, Apocryphal jurisprudence, Post-liberal law, Post-structuralist legal studies.

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RESUMEN. La hipótesis del autor es que el derecho en las teorías jurídicas modernas ha sido considerado solamente desde el punto de vista de los gobernantes o, en lenguaje hartiano, desde el punto de vista externo, y ello es así porque los filósofos del derecho ven a éste, al menos implícitamente, como un producto exclusivo de la política estatal y de partidos. Sin embargo, este formato en el cual la política ha sido elaborada comienza a ser rebasado hoy en día. Por lo tanto, si el concepto de la política está cambiando, el concepto de derecho debe igualmente cambiar. Ésta es la razón por la cual el autor toma como punto de partida la explicación de Benjamín Arditi sobre "el devenir-otro de la política", tal explicación es el soporte para sugerir un cambio radical en la manera en que el concepto de derecho ha sido entendido. De este modo, el autor argumenta que, a pesar de ser Herbert Hart el iusfilósofo que hizo la importante distinción entre los puntos de vista externo e interno de las normas, Hart mismo es inconsistente con su tesis ya que refiere el punto de vista interno como exclusivo de los funcionarios estatales. En este sentido, la tesis que se intenta defender es que no habría diferencia alguna en considerar al derecho de esta manera o considerarlo solamente desde el punto de vista externo. Finalmente, el autor realiza un breve comentario sobre el juez Hércules dworkiniano para mostrar cómo Dworkin se encuentra también atrapado en el formato de la política estatal y de partidos.

PALABRAS CLAVE. Democracia post-liberal, Benjamín Arditi, Jurisprudencia apócrifa, Derecho post-liberal, Estudios jurídicos post-estructuralistas

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