

THE APPLICATION OF LAW IN THE DIGITAL AGE: TECHNOLOGICAL INFLUENCES ON SOCIETY

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Abstract: The aim of this article is to identify the legal presuppositions that modern society has come to rely on as a result of science and technology, especially with the advent of the Internet. Therefore, the principles of Participatory Democracy and the Rule of Law are presented from the political conceptions that are intrinsic to democracy. The law faces various issues as a result of globalization, especially those posed by a society based on information and knowledge, in which a nation's ability to obtain information is crucial to its progress. The Brazilian government's public policies in this new scenario are highlighted by the approval of the Access to Information Law and the issues addressed by the Supreme Court. Finally, a new civilizational framework is explained, along with the laws and ethical standards of this new society.

Keywords: 1. Ethics; 2. Internet; 3. Technology.

Resumo: O objetivo deste artigo é identificar os pressupostos legais com os quais a sociedade moderna passou a contar como resultado da ciência e da tecnologia, especialmente com o advento da *Internet*. Portanto, os princípios da Democracia Participativa e do Estado de Direito são apresentados a partir das concepções políticas que são intrínsecas à democracia. O direito enfrenta várias questões em decorrência da globalização, especialmente àquelas colocadas por uma sociedade baseada na informação e no conhecimento, em que a capacidade de uma nação de obter informações é crucial para seu progresso. As políticas públicas do governo brasileiro nesse novo cenário são destacadas pela aprovação da Lei de Acesso à Informação e pelos temas abordados pelo Supremo Tribunal Federal. Por fim, um novo marco civilizatório é explicado juntamente com as leis e os padrões éticos dessa nova sociedade.

Palavras-chave: 1. Ética; 2. *Internet*; 3. Tecnologia.

Food for Thought...

Considering that science, technology, and the impact of virtualization on daily interactions have had a significant influence on the formation of contemporary civilization, it is imperative to establish new assumptions for the concept of law as a 'legal act'.

Since the beginning of the 21st century, human connections have been facilitated by digital technical artifacts that have the capacity to influence political reality, resulting in a shift in dependencies among social ties. Examples of these influences include the Arab Spring, globally known as a series of protests focused on democracy in the Middle East and North Africa, and more recently, the wave of popular demonstrations that occurred in Brazil in the mid-2010s and had an impact on social media platforms worldwide.

The main goal of this discussion is to present a critical approach to the political and legal circumstances that shaped legislative structures during the era of widespread human connection through computer networks

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like the Internet. Thus, understanding the current (contemporary) situation requires an appreciation through the growth of a society whose assumptions are shaped by materialism and technoscience.

This social transformation is demonstrated by how Aristotelian political concepts reflected the revolutionary changes caused by unbridled transformation in the 19th century - in Civil Law and the global crises of the 20th century caused by major wars and genocidal tragedies worldwide that shook ideas about morality and law.

For Bobbio (2006), tensions between legal positivism and natural law, with their opposite antitheses of ‘universality’/‘particularity’ and ‘immutability’/‘mutability,’ as well as the advancement of science and technology and the persistent claim that positive law must keep pace with scientific developments - these can provide ‘an infinite source of theoretical thought’ on these disputes; a mistaken belief..

In this approach, the basic understanding of discourse structure within this new social and technological context will be pointed out. The contributions of language aim to validate possible similarities between two paths: the first, whose essence lies in the language of common politics and whose meanings are always changing and often relevant, as it forms the basis of this understanding with terms like democracy, law, technology, power, and virtualization, which together compose a series of investigations on the theme of this study approach. The second rotation creates prerogatives for legal doctrine that were initially derived from philosophical meanings and historical events that are open to numerous interpretations from philosophical, ideological, and aesthetic perspectives.

LAW, POLITICS, DEMOCRACY

The hierarchy outlined in Aristotle’s well-known approach (2012) to the principles of a complete life and ethics should be emphasized when investigating the idea of legal understanding in connection with the social relations of the modern era. As a creature deviating from an idealized natural state and manifesting itself in order and established through a system of social bonds that allows it to fully realize its intrinsic potentialities, the “philosopher establishes earlier social relations as the nature of the political man,” according to Aristotle (2012, p. 18).

It is evident, therefore, that the city is part of the things of nature, that man is naturally a political animal, destined to live in society, and that he who, by instinct, and not because any circumstance inhibits him, ceases to be part of a city is base or superior to man. Such an individual deserves, as Homer said, the cruel censure of being without family, without laws, without a home. For he is eager for battles and, like birds of prey, incapable of submitting to any obedience.

Comparisons with practical life are based on political associations and, with them, the necessary connections for a contemporary dialogue aimed at understanding the reflections of this thought in a political system. These comparisons with practical life are based on this structural definition and its content, which follows Aristotelian ethics in comparing theoretical life with human nature.

In Greek society, in turn, the inseparable form of the just city and the virtuous citizen was formed through this structure: the just city and the just citizen, in which man assumes the central role because he possesses the essence of logos, allowing him to consider what is right and wrong and enumerate the laws that regulate a dignified life, according to Faria (2007, p. 15):

“Logos” is a central concept in Greek philosophy that lends itself to a variety of interpretations and translations. Commonly translated as reason, it also means law, discourse, language, proportion in exchanges, and connection. Derived from the verb “legein,” to read, it can also signify reading – the perception of the connection that links words together [...]

That said, it is also important to emphasize that in Greek society, the inseparable form of the just city and the virtuous citizen was formed through this structure—the just city and the just citizen, in which man assumes the central role because he possesses the essence of logos, enabling him to consider what is right and wrong and enumerate the laws that regulate a dignified life.

2

When Athens was dominated by demagoguery and the corruption of its rulers, ideas on how to provide the city with a just organization—giving everyone their due, neither more nor less—gained prominence. This was the moment when Athenian democracy encountered ethics and justice. The political fact, according to Aristotle, rejects the theory of ideas and moves away from notions based on historical data and the social reality of the moment. It defined the just city as the tangible realization of the ideal plurality that leads to real plurality. This is achieved through historical events and the social realities of the period. The world to

which we have access is important for men to achieve happiness in reality; according to Faria (2007), men can live with dignity.

Therefore, this stance supports the author's theory that humanity will only be able to survive indefinitely in a well-administered city. This place of communal living has qualities that go beyond simple border demarcation. Along with its peculiarities and emotional ties, the history, customs, and social gathering places of the city contribute to its unique identity, formed by friendships, family, and other relationships. In other words, the Greeks founded a politics that, at the time, was more than just a set of social facts; instead, it was built on these central ideas. Indeed, Aristotle considered politics as an indivisible attribute and an inherent purpose of human existence. According to Chauí (2009, p. 358), political power is a good that can exist within the multiplicity of the polis, according to Aristotle, who saw it as an indivisible attribute.

There are, therefore, two types of justice in the city: distributive justice, concerning shareable economic goods, and participative justice, concerning participatory political power. The just city will know how to distinguish and achieve both. Distributive justice consists of giving to each what is due, and its function is to give unequally to the unequal to make them equal. (author's emphasis)

However, in light of the consideration that the traditions of each society define the best type of government for its people, this social justice recognizes and honors these cultural prerogatives. Monarchy considers that the greatest honor in modern society is the delegation of authority to a single individual. Finally, democracy, which respects equality, takes into account economic differences, not political ones, between rich and poor, and asserts that everyone has the right to participate in decision-making, is correct in an aristocracy.

GLOBALIZATION OF THE RULE OF LAW

The development of social services by industrialized states, especially those governed by Germany and England, in the late 19th century is credited with giving rise to the welfare state. But at the height of the turbulent beginnings of the revolutions and wars of the 20th century, there was a conflict between the new liberalism and its conservative tendencies, as well as Marxist upheaval in pursuit of socialist objectives.

During and after World War II, it becomes evident that the welfare state guaranteed some fundamental foundations to civil society to combat the causes of social ills, including scarcity, diseases, illiteracy, suffering, and idleness, instead of just providing benefits to the weaker members of society.

The first signs of a collapse in welfare state expenditures emerged in the 1950s, which would later worsen as a result of periods of astronomically high inflation and the relentless pursuit of peace and the reconstruction of nations torn apart by the effects of conflicts. Thus, Outhwaite (1996, p. 262), describes the effects of this welfare state strategy:

The threat transformed into a reaction during the 1970s when inflation caused expenses to rise, and efforts were made to cut public spending. The result was the so-called welfare state crisis, a crisis of both values and finance or management. In the words of a British government document on social security (1988), the state's provision played a significant role in supporting and sustaining the individual; however, it should not discourage self-confidence or interfere with individual supply or responsibility. (emphasis added)

In many industrialized capitalist countries in the northern hemisphere that developed after the mid-20th century, neoliberalism—a phenomenon distinct from classical liberalism and supposedly founded after the era of the Rule of Law—is gaining ground and becoming the dominant ideology. From the end of World War II, this political-economic ideology grew in influence within hegemonic economies during the 1973 oil crisis. The notion of dependence of industrial powers on changes in the price of this product increased during this period, as did the price of oil.

3

In order to rebuild capitalism in crisis during this period of extreme volatility in the global economy, pro-free-market economic policies were implemented. A crisis of capitalism. With this power came financial and productive globalization that swept through most political systems in North America and Europe. The natural order developed as a result of personal choices diffused the economic law of existence. The removal of barriers to foreign direct investment and the opening of the economy through financial and trade liberalization were the slogans of the time.

Neoliberalism argued that the State should focus its efforts on infrastructure, security, and health, minimizing its intervention in the market to give more freedom to the private sector. According to Vicentini (2006), this policy resulted in the relocation of companies to peripheral countries, where they hoped to take advantage of a workforce controlled by low wages and kept captive by the lack of social laws that could regulate labor relations.

Due to this response to the crisis, low-cost container transportation techniques are developed, telecommunications and information technologies are refined, and the spread of production stages can efficiently expand on a global scale.

Globalization enables people to engage in collective actions on a worldwide scale, but, fundamentally, the law is a normative structure that is limited by the boundaries of a specific area. The ability of a group to coexist and survive in society largely depends on the extent to which social norms govern behavior. Moreover, Norberto Bobbio (1998, p. 349) states that the State is seen as a complex network of regulations, whose base and ceiling are constitutional principles – as attested below:

[...] laws, regulations, administrative measures, and judicial judgments are the various levels (to repeat once again Kelsen's fortunate metaphor of the legal system as a pyramidal structure), like the set of powers exercised within this structure (the so-called Rule of Law in the broadest sense of the word) and as such, and only as such, are accepted as legitimate powers. This process of convergence between legal structures and political power has resulted in the reduction of Law to state law (in the sense that there is no legal system other than the one that identifies with the coercive legal system of the State) and, at the same time, the reduction of the State to a legal State (in the sense that there is no State except as a judicial system. (author's emphasis).

In the end, freedoms are guaranteed by the constitutions of sovereign states, which are supported by the principles of fundamental rights. Essentially, the purpose of a constitution is to ensure the rights of citizens and, more importantly, to establish formal mechanisms of access in a formal document with hierarchical rules. The Constitution would be at the top of the legal system pyramid, in contrast to Kelsen's symbolism⁵.

FROM THE INFLUENCE IN THE DIGITAL ERA TO THE APPLICATION OF LAW

In Brazil, the constitutional concepts of fundamental rights are supported by legal issues related to access to public information through communication and information technology. The main purpose of the Internet is to facilitate the exchange of experiences among individuals, companies, institutions, and governments through the transmission of information, research, and factual analyses of society. The Internet is a component of the current structure of globalization and access to information. In a culture characterized by interactions via digital media, new interpretations of the law can be found in this scenario.

The ideals of freedoms rooted in fundamental constitutional rights serve as the basis for Brazilian legislation governing the Internet. In this new, interconnected, and interactive society, some significant points of this regulation are present. Among them are issues related to cyber monitoring, the legal definition of privacy and authorship, the extent of immaterial property, the virtualization of property relations in online financial transactions, access to financial transactions, and the availability of goods through virtual platforms and companies. The Post-Industrial Society gives rise to the Information Society, culminating in the Knowledge Society. Moreover, the challenge for the law is to react to these challenges of the current society, embedded in unprecedented technological progress.

The Executive Branch created Bill 2.126/2011 as a result of discussions on the topic. 'Establishes principles, guarantees, rights, and duties for the use of the Internet in Brazil' is the title of a document from the Executive Branch.

4 As a result of this initiative, Law 12.527, dated November 18, 2011, commonly known as the Access to Information Law, was approved. Its purpose is to regulate the requirements and processes for the acquisition of public information. Since Law 12.527 came into effect, public entities at the local, state, and federal levels, belonging to the Executive, Legislative, and Judicial branches, have committed to following the established rules for access to public information.

In this sense, public transparency, materialized by the Access to Information Law, is an imperative
5 In other words, one must know how to separate values through the norm and consider it objectively and validly – not in the relationship of the norm as it is established but based on the 'desire' or 'will' of a subject or more concerning this 'indicated' object (our interpretation).

rule. Thus, other legal instruments, however, also exist, enshrining access to information.

As an illustrative example, the General Bidding Law – Law No. 14,233/2021 – requires, as an indispensable condition of validity, the disclosure on the National Public Procurement Portal (PNCP) of contracts and their amendments.

That being said, the non-compliance with the provisions of the Access to Information Law may lead to the initiation of proceedings against public officials for the commission of acts of administrative misconduct and the imposition of fines by the relevant Courts of Auditors.

FROM TECHNOLOGICAL COMPLEXITY TO THE PROMOTION OF ETHICS IN SCIENCE

A better understanding of the social relationships we are witnessing in the 21st century requires not only the recognition of the complexity of physical and intellectual interconnections related to new technologies but also the willingness to accept the complexity of these connections and the formulation of a concept of virtualization to better understand the moral and axiological issues involved in the present. This is far from being an argument that proves the magnitude of the moral and axiological problems involved at the current moment.

Emphasizing certain conceptual notions of ethics is crucial for developing connections between the ideas of habit, custom, and, as demonstrated by Greek philology, “ethos.” A theory of consent regarding what constitutes good or bad social or religious relations, a consciousness that transcends logic, and a recommendation for human behavior through the lens of religious ethics are some applications of this idea. In this regard, according to Mautner (2005, p. 201): “It is similar to philosophical normative ethics in its claim of general validity but differs in that it does not claim to be established solely on the basis of rational inquiry.”

Ethics, as we know it today, has a direct relationship with what we call morality due to its inherent analytical and philosophical structure. Events demonstrate that, as the theme of ethics manifests itself in various epochs and under specific cultural and regional conditions, the concept of ethics is more temporally limited than in relation to the history of human moral ideas. In his Dictionary of Moral Philosophy (2001), Mora discusses the notion of morality throughout human history. Thus, according to Mora (2001, p. 245): “(...) it comprises the study of all the norms that have regulated human conduct from prehistoric times to our days. This study is not only philosophical or historical-philosophical but also social.”

In this perspective, Freud (2010) first constructs arguments around what the general public considers to be its religion, based on a doctrinal structure that seeks to explain the mysteries of this world. This pious individual, accompanied by the figure of an expanding father, seeks the solution to all the trials he faced in his existential journey of the soul. Then, concerns about the reason behind human behavior in life emerge.

Based on a distorted understanding of reality, the psychoanalytic theorist argues that the common man expresses his perception by reading what appears to be a life story. It is possible that most people may not be able to overcome this unsupported credulity, which is very similar to what we know as myth or dogma. According to the latter concept, religion, science, and art are antitheses to each other as the greatest human achievements - the latter two remain unattainable for most people.

There can be no higher ideal for man than himself, due to its ontological assumption that there is a purpose to life. Although our constitution limits the pursuit of the environment, the dangers to a person’s well-being come from three sources according to Freud (2010, p. 31): “from the body itself, from the external world, and from relations with other human beings.” Men have become accustomed to these demands in the name of defending conventional anthropocentric ethics. In their most direct defense, voluntary seclusion, the happiness of quietude against the terrible external world, human relationships are the source of the greatest pain among men.

Thus, the lives of men are driven by the unrestrained pursuit of all pleasures; some behave in solitude as a form of self-defense, as a result of interpersonal connections, while others seek science as a means to force nature to submit to human desires. This process of achieving happiness through internal processes is the source of the goal to become independent of the external environment. However, as reality is constructed by internal elaborations, it is evident that the employment of this life ideology further weakens the human aspect of interpersonal connections.

The scientific advancements and technical developments of our days have not been able to fully satisfy the needs of people or show them the path to happiness. Nothing has made people happier, including the sense of discontent with our current civilization, the decline in infant mortality, infant mortality in the face of beneficial natural selection, the ability of the telephone to facilitate instant communication, and the ability of

planes to alter the perception of distance. Happiness is undoubtedly a personal experience.

In terms of what constitutes civilization, culture is defined as the genesis and basis of human values and activities. Humans create a cultural legacy that is transmitted through generations as a result of their technological innovations. These ideas - inspired by analogies with God - define omnipotence and omniscience. Three examples of the renewal and magnificence of human activity - beauty, cleanliness, and order - do not overshadow the cultural prerequisites that are vital for life, like the natural realm. These three attributes have a specific place in the order that is necessary for civilization, according to Freud (2010, p. 55):

However, no trait seems to characterize civilization better than the esteem and cultivation of the highest psychic activities, intellectual, scientific, and artistic achievements, the dominant role reserved for ideas in people's lives. Among these ideas, religious systems, philosophical speculations, and finally what can be called ideal constructions of men stand out— their conceptions of a possible perfection of individual, of the people, of all humanity, and the demands they place based on these conceptions (author's emphasis).

A final facet of civilization that needs to be identified, and no less significant than the previous ones, is social relations. Two examples of these characteristics, which create a balance between the demands of the group and of each individual, are provided by Freud (2010, p. 60) in this way:

[...] it is impossible not to see to what extent civilization is built upon instinctual renunciation, how much it presupposes precisely the non-satisfaction (suppression, repression, or what else?) of powerful instincts. This 'cultural frustration' dominates the broad scope of social ties among humans; we already know that it is the cause of the hostility that all cultures have towards combat.

The benefits of civilizational progress are undeniable in tangible terms, where advances in sciences and technologies - which are closely related - indicate the advancement of civilization towards effective outcomes. It is important to note, however, that achieving science through specialization in a particular field of knowledge requires individuals to forgo other knowledge. Thus, according to Jonas (2006, p. 270), "as the collective cognitive heritage grows, individual knowledge becomes increasingly fragmented."

TO CONSIDER THE UNFINISHED...

The idea intrinsic to the human condition emerged in law as a result of the civilization process of humanity. Humanity faced a series of challenges in the process of defining the legal standards and reasoning that would govern social coexistence and its peculiarities during the decades that followed the understanding of the political man.

Thus, the brilliance of political philosophers throughout history must be highlighted. Among those who advanced the understanding of political relations and intrinsic rights of their time were Aristotle and Montesquieu, who designed legal structures resistant to periods of instability and disasters. In the process of forming modern societies, democracy and the fundamental rights enshrined in constitutions were two of the most enduring legal principles.

In this perspective, the current world demonstrates how changes in science, politics, and technology affect the way people interpret ethics in the face of instability, which is a natural byproduct of the digital age, international collaboration in knowledge, and future uncertainty. Present-day society shows that transformations in politics, science, and technology influence the understanding of ethics.

In this sense, human behavior is a product of the inherent right of man, the result of repeated acts, and the value attributed to people's freedom to choose how to resolve conflicts that arise from being human. In this view, the normative ideal that underpins the rules of a legal system provides the framework for social progress amid disparities, and this is the core of law.

Therefore, ensuring freedom and the availability of knowledge is crucial for the advancement of ethics through the interpretation of legal science in a time of global communication via the web. Thus, the extensive multidisciplinary debate on law in various times and places is fueled by the dialectic between norms and values.

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