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Normative Force, Specular Theory and Constitutional Imperative

Fuerza normativa, teoría especular e imperativo constitucional

João Gaspar Rodrigues

Lawyer, specialist in Criminal Law and Criminal Procedure Law from Universidad Cândido Mendes in Rio de Janeiro, Master's degree in Law from the Universidad de Coimbra. Prosecutor at the Public Ministry of Amazonas. joaorodrigues@mpam.mp.br
https://orcid.org/0000-0001-6512-4643

Abstract

This essay weaves a revisionist analysis of the conceptual and structural relationship between three fundamental properties of modern constitutionalism: normative force, postulate of actualization (translated into specular theory), and collective belief in the constitutional imperative. Throughout the pages, as far as possible, an attempt is made to explain the relational character of the presented conceptual representations, so that the knowledge under analysis is able to interfere with reality, or, at least, to better understand it, purifying some classical ideas.

KEYWORDS

Constitution, normative force, constitutional supremacy, specular theory, constitutional imperative.

Resumen

Este ensayo teje un análisis revisionista de la relación conceptual y estructural entre tres propiedades fundamentales del constitucionalismo moderno: fuerza normativa, postulado de actualización (traducido a teoría especular) y creencia colectiva en el imperativo constitucional. A lo largo de las páginas, en la medida de lo posible, se intenta explicar el carácter relacional de las representaciones conceptuales presentadas, de manera que el conocimiento bajo análisis sea capaz de interferir en la realidad o, al menos, de comprenderla mejor, depurando algunas ideas clásicas.

PALABRAS CLAVE:

Constitución, fuerza normativa, supremacía constitucional, teoría especular, imperativo constitucional.

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1. INTRODUCTION

The interpretation of any legal norm draws its strength, ultimately, from the Constitution and its fundamental mandates. Through its articles, life follows its path, discovering its solutions, rationalizing the power that arises from social relations. The Constitution is, figuratively speaking, the burning center of an immense globe from which all citizens are equidistant, and this equidistance means that the fundamental text guarantees, at the same time, reason, justice, freedom, and equality. It guarantees not only order in chaos, but an advantageous balance between stability and variability (perhaps the most vital constitutional tactic[1]), guiding, through its norms and principles, the future of society. It is a set of norms capable of triggering, from top to bottom, a rational programming of human activities; and it is, also, a singular status of minimum certainty and exactitude in the plurality of possibilities of postmodern life[2] .

The Constitution, from the point of view of current constitutionalism, is the most secure organ of social and political stability in the world, and a symbol of the supremacy of the law over the organs of government and of the guarantees of the individual (as a moral and political psychophysical unit) in relation to the administrative machine (Pound, 1958, p. 22; Viamonte, 1959, p. 14). Through it, it is possible to transform the uncertain into certain, the confused into clear, the insecure into secure, the unstable into stable, the unpredictable into predictable, competition into cooperation, the ideal into real, and the theoretical into practical. And, perhaps, here and there, through an institutional *faux pas* of the system itself, it embraces the magnificence of opposing values and maintains a dynamic balance between the necessary and the possible (hence accepted principles such as reasonableness, proportionality, balance of interests, reservation of the possible, etc.). But, in any case, it is not an "instrument of government", but an instrument of popular sovereignty. Its content is not limited to the political sphere, extending to various fields, such as social, cultural, economic, etc. Its scope far exceeds the purely governmental, and its norms are applicable to the private order of individuals, as well as to their relations with the State.

The distinguishing feature of everyday practical activity, as the philosopher John Dewey (1960, p. 6) put it, is precisely its uncertainty. Judgment about actions to be taken can never obtain more than a precarious probability. Practical activity deals with individualized and singular situations, which are never identically repeated, and about which, therefore, total certainty cannot

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[1] *Tactics* taken here in the Greek sense, as the art of creating order (Bentham, 1991, p. 61).

[2] Postmodern life endowed with a somewhat fluid reality, without structure or contour, without defined beginning or direction.

be safeguarded. To counteract this uncertainty intrinsic to social life and provide a minimum of existential security, there is, in particular, an entity forged by considered democratic reason: the modern written constitution[3].

It is man in society who gives rise to the disturbance of regularity; in him, the juridical harmony, the fruit of certainty and order, breaks down. And to rescue (or preserve) this harmony, we create a fundamental document called the Constitution, which in modern times has become a living force of democracy. There is a paradox worth mentioning here (a paradox that pure logic cannot tolerate). Man/society, moved by a principle of rationality, launches the constitutional instrument to ensure stability and variability within a predefined scheme, but is the first to violate these rational norms. The proof of his rationality ("weighted democratic reason") is also the mirror of his limitation and radical imperfection, since he faces his unpredictable behavior guided by error, ignorance, and other inadequacies inherent to the human condition.

Ensuring stability and variability[4] is the certificate of quality of a constitution, and a part of the fundamental dynamics of the constitutional universe. However, the real test of functionality to the needs of a community is time, the longevity of the document, proving to be a useful structure to face the uncertainties which govern not only the natural world (in which Newtonian causality gave way to quantum probability), but also all human things. In relation to these properties, there is the possibility that, to be effective, it requires the adherence of its applicators. The power of stability/variability is only realized if there is a firm conviction in the constitutional imperative. The Constitution proposes these purposes (stability / variability), but the social, political, and institutional environment makes them real.

The normative force of the *suprema lex* represents the element of stability, while the so-called updating postulate (or specular theory) encompasses the vector of variability. This vector will always be present in any free society, as Thomas Sowell (2011) emphasizes: "The existence of individuals, if any, in any free society who are completely satisfied with all the policies and institutions under which they live is doubtful. Virtually all people, in varying degrees and types, support change" (p. 164).

The fundamental document is a kind of DNA (the genetic code of the State) - or in Viamonte's evocative expression, an institutional *fiat lux* - containing all the basic instructions (or normative messages) for the organic construction of public institutions, the complete structure of gov-

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[3] Written constitutionalism has been one of the cornerstones of Western democratic culture.

[4] The semantic load of the Constitution is largely responsible for its variability. If it is not a sufficient condition for this, it is certainly necessary (precisely because it is value-laden).

ernment (with the limits of the legitimate authority of the various organs), the delimitation of fundamental rights and public liberties (with mechanisms of protection), the way laws are made and who is competent to make them, as well as the respective functional procedures (Viamonte, 1959, p. 14; Cavalcanti, 1977, p. 13; Pound, 1958, pp. 103-104). The most important requirement is the existence of a process that guarantees the exact replication of such instructions: interpreters and executors committed to the democratic process and the rule of law.

It is not the grandiloquence of a political leader, the charisma of a specific ruler, or the often uncharitable wishes of the noisy crowd that guarantees stability on the stage of the political macrocosm. The main and determining guarantee is the Constitution and its faithful application. But for this application to be "faithful", an almost religious culture of homage and conscious submission to the supreme document (and also to the values enshrined therein) is necessary.

Not without profound reason, the ancient Athenians attributed their political greatness to their Constitution. They celebrated it in every tone and gave it a devotion seldom seen in the political history of a people. In his "Funeral Oration," Pericles says quite emphatically (Croiset, 1918), "We have a constitution which was inspired by no other, but which is, rather, a model for the others" (p. 110).

And after this proud declaration on the unique, original, and truly autochthonous character of the Athenian Constitution, the speaker points out its essential features: equality among citizens, rule of law[5], respect for rights, love and enthusiasm for justice, dedication to questions of public order, political morality, concern for social peace, etc. This primacy of Athens, worthy of the attention of posterity, is inseparable from its political Constitution and a beacon, whose ray of light has crossed the centuries to the present day.

Thus, following this path, and under a multi-faceted line of argument, we will address in this study the conceptual and structural relationship between some fundamental properties of the Constitution: normative force, postulate of actualization (translated into a specular theory, which we will explain in detail), and collective belief in the constitutional imperative. We will try to highlight, throughout the pages, as far as possible, the relational character of the presented conceptual representations, so that the knowledge under analysis is able to interfere with reality, to shape it, or, in the worst-case scenario, to better understand it.

[5] "What was called the Greeks' passion for law was their passion for the systematic conduct of government in conformity with that ideal" (Pound, 1958, p. 6). The ideal is still very much in force. Loyalty to the laws, principles, criteria, and ideas of justice is an intrinsic virtue, an integral part of a citizen's honesty.

2. THE PRAGMATIC VALUE OF THE CONSTITUTION AND THE SPECULAR THEORY

A constitution seems to be, in itself, an abstract and insubstantial framework (simple sheets of paper with linguistic symbols engraved on them). It has no absolute intrinsic value; it is worth what its applicators are worth[6]. The practice of a constitution also depends on one's constitution (moral, political, social, cultural, etc.) (Barthou, 1946, p. 144; Schmitt, 2009, p. 46). It is established by the abundance of its faithful supporters, and, like any political formula, means little outside of its use. Moved by its own force, without the faith of the applicators and without their commitment (*engagement*), it does not prevail, and can even be sabotaged. The way it is interpreted, absorbed (internalized in the political community), and applied, constitutes the important point and the true reality, revealing a frankly democratic tendency (or not). Once these stages are overcome and priorities are adjusted, and through a unique combination of qualities, it becomes: 1) the purest and most beautiful product of weighted democratic reason (which guides wills and presides over institutions); 2) a laboratory that helps prepare the public for democracy and shows it the way forward; 3) a filter of the living forces that emerge, unceasingly, in society; 4) an instrument that gives a sense of national belonging. From one extreme to the other, there is no escape from this evidence that makes a constitution not a jumble of promises or theories, but of realities.

Extracted from its purely formal confinement, a constitution is not just a document filtered in exhortative language[7], promising or *ad usum Delphini* terms, nor a completely defenseless sandcastle. It creates organic mechanisms based on a system of checks and balances that guarantee

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[6] Woodrow Wilson (1963) says with overflowing pragmatism: "... governments will always be the governments of men, and no part of any government is better than the men to whom that part is given. The criterion of excellence is not the law under which the officials act, but the conscience and intelligence with which they apply it (...). The struggle for constitutional government matters in the struggle for good laws, certainly, but also for intelligent, independent courts" (p. 15).

[7] "The guarantees of liberty in American constitutions are not and cannot be regarded as exhortations as to the manner in which the government shall function or the various organs to function. These are precepts of the law of the land, supported by the power of the courts to refuse to put into effect acts of the legislature or executive which are contrary to them." (Pound, 1958, "preface", V). On p. 105 of the same work, Roscoe Pound teaches that the prescription of constitutional limits and guarantees would be insignificant if they were considered only as pious exhortations or appeals to the patience and good judgment of the legislature or the executive, as the fate of the "Latin American Constitutions" demonstrates.

its survival, observance and supremacy (normative force[8]). It is not a free, egocentric and supreme force, in the sense of unrestricted or absolute, in a world of multiple forces, in which each force only acts in the best possible way when it better fits the forces around it.

Among these "checks and balances" (clearly inspired by Newton's theory of the equilibrium of celestial bodies) are the legal structures (courts and other related bodies, not only the inherent right of the people to resistance or insurrection) and the political structures (executive and legislative branches) to capture social or institutional *inputs* and convert them into decisions that ensure the inviolability and essentiality of constitutional norms[9]. It can be seen, therefore, that the constitution itself creates a bridge between its text and society to guarantee an indispensable normative energy, and, in parallel, its evolution.

These organs and these public powers (with legitimacy to enforce constitutional norms) are not isolated elements, independent forces wandering in their own interests, but mechanisms of a force whose source, the Constitution, confers authority on them. They are servomechanisms[10] or bridges between the Constitution and the constituent society, whose office fulfills a special function by which they incorporate values of the social context to safeguard the constitutional imperative.

The Magna Carta of 1215, a constitutional document imposed by the English barons on King John Lackland, already mentioned the need for a mechanism to enforce the agreement. This is what the nobles proposed:

> "Give us a solemn promise, as monarch, that this document shall serve as your guide and govern in all dealings with us, confirm this promise by the solemn affixing of your seal, *admit some of us as a commission to superintend the observance of this agreement*.... (Wilson, 1963, pp. 4-7)

Seven years after the Magna Carta, in 1222, the nobles of Hungary obtained from their king a similarly oriented document, the "Golden Bull", to which all those who fought for privileges in

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[8] The emergence of a normative force is one of the crowning glories of modern constitutionalism (Wilson, 1963, p. 6), but since it is conditioned by historical and social circumstances, its value is relative.

[9] A constitution that is neither provoked nor demanded, that is, in disuse, becomes a useless juridical-political fossil. "Agitation is part of the essence of a constitutional system ..." (Wilson, 1963, pp. 31-32) and the movements and actions that arise from it relieve pent-up energy, restoring or maintaining socio-political stability. In non-constitutional forms of government, there is no escape from action, which can result in a kind of helpless rage, the mad consequence of which results in the destruction of the government itself.

[10] "The institutions of government are not independent agents, but reflect the existing distribution of power in society at large" (Chomsky, 2002, p. 22).

Hungary turned, just as the English did with the Magna Carta. But the Hungarians did not achieve a constitutional government, and the main reason was that they did not establish a mechanism for the maintenance and enforcement of the agreement, as the English did.

The Englishmen of the time of John Lackland had the practical instinct to see that promises on paper are only promises on paper unless the party claiming the privilege remains as alert and ready to act as the party exercising the power. It is not enough to formulate the most valuable rights, collect them, and provide for them in a legal document (constitution or law). They only assume legal imperative and supremacy if they can be executed or guaranteed by their own means. Law, in a broad sense, is only that which can be executed (or guaranteed) by means of mechanisms created especially for this desideratum.

Some written constitutions, by failing to provide for these enforcement mechanisms, brought with them their own ruin (and little normative force). The U.S. Constitution was saved from this fate by the ingenious construction of jurisprudence, in the famous *Marbury v. Madison* case, tried in 1803, in which the basis for judicial review was established.

In fact, it is the possibility of judicial intervention, public force, and sanction that makes it possible to distinguish legal norms (including constitutional norms) from moral precepts or social usages. Undoubtedly, constitutional norms have, in themselves, a "rational or intellectual" efficacy, since it is a matter of making order, freedom, and justice reign, and these higher ideals exert a certain attraction in the minds of men. Moreover, if there were, in most cases, no spontaneous obedience, and if it were necessary to have a policeman behind each individual, and, who knows, a second policeman behind the first, social life would be impossible (Hauriou, 1971, pp. 29-30)[11]. Therefore, legal norms, especially constitutional norms, in order to be enforced, need to awaken in everyone the belief that they must be observed because they represent the high ideals of rationality, order, and justice. The greater and more widespread this belief is, the less need there will be for judicial intervention and coercion outside the system.

However, it should be noted that the normative force of the Constitution cannot be measured simply by the degree of spontaneous acceptance or obedience of the constitutional norm in the community, but by the level of effectiveness in the legal and political reality of that community. Any power is only imposed (or legitimized) by its effectiveness. Thus, by itself, natural obedience

[11] It is not the courts and the police forces that force citizens to pay their debts, to do military service and not to lend money at exaggerated interest rates. These limitations are laws created under the protection of the Constitution (Pécaut, n.d., p. 205).

does not provide an accurate test of the normative force of constitutional provisions. There is an inescapable ingredient of institutional effectiveness.

Let us suppose two constitutional systems: one provided with institutional mechanisms to protect the constitutional imperative, and another lacking such controls. The example is given by Roscoe Pound (1958, pp. 8-9). In the first system, constitutional provisions bind citizens and employees alike, being supervised by the courts through ordinary (or special constitutionality review) processes at the request of aggrieved persons (or legitimate institutional actors). A certain government took over a private company through the Army. Immediately, the owners filed an ordinary lawsuit against those who acted, challenging the legality of the takeover, and obtained a favorable decision from the court. Compare this case with the incident of the arrest of deputies (members of the chamber of the legislative body) by Napoleon III, then president of France. One of the deputies went ahead of the soldiers and read the Constitution to them. But the Executive was the judge of its own powers. Nothing could be done but protest. The Executive prevailed. In the first system, the remedy against the excessive action of the legal powers is judicial action[12], the process of interdict or the writ of production. In the second, it is insurrection, rebellion, or revolution.

The normative and principled burden of the Constitution allows constitutional courts to virtually act as a permanent constituent convention, adapting the constitutional text to the needs of subsequent eras (Schwartz, 1979, p. 193; Baum, 1987, pp. 206-207), expanding or contracting constitutional standards. After all, each generation has its own scale of values[13], and a constitution, as a human work, cannot be understood or applied in isolation from its historical context, regardless of the era.

A compelling example is the U.S. Supreme Court and its landmark decisions that helped the country face its many challenges, such as: racial integration in schools, reformulation of the number of legislators, abortion, prayer in schools, and so on. In its hands, the Constitution received an adaptation and elaboration that would fill no less than its authors from the simple days of 1787 with awe (Wilson, 1963, pp. 120-121). The powers explicitly granted by the Constitution remained what they had always been; but the powers drawn from it by inference grew and multiplied beyond all expectation, and each generation of statesmen looked to the Supreme

[12] "The constitutional powers of the courts represent the ultimate security of both individual privileges and governmental prerogatives" (Wilson, 1963, p. 109).

[13] If a given fact of life is considered just at a given time and place, it may be considered unjust at another time and place. This is because the judgment of just and unjust includes the consideration of different circumstances (Cohen, 1956, pp. 336-337) that cannot be definitively imprisoned in a fundamental document.

Court to provide them with the interpretation capable of meeting the needs of the day. Not only the safety, but the purity of the system depends on the *saggezza* and good conscience of the Supreme Court. The principles granted by the Constitution must be expanded and adapted by convenient interpretation; but the reason and manner of expansion implies the integrity, and, therefore, the permanence of the whole system of government.

Once the mechanisms for observing the constitutional imperative and ensuring the actualization of the *suprema lex are* removed, normative force does not remain. Ignorant of this support base, no normative energy can be reasonably maintained. Therefore, any Constitution that is not accompanied by these properties erases part of the achievements of modern constitutionalism and contaminates the conviction in the supremacy of the constitutional norm.

These mechanisms that ensure the normative force of the Constitution must have a system of values that motivates their activities, the main one being faith in the constitutional imperative itself. This "faith" consists, basically, in living in and for the Constitution, as an instrument of stability and social progress (to the extent that the constitutional instrument has a reasonable degree of effectiveness in achieving the pursued ends). Nurturing this disinterested conviction in the constitutional imperative is useful, insofar as it encourages others to also observe the same behavior. It is possible, reflecting experience with human nature, to educate and mold mindsets by example (words can convince, but "example drags"[14]), encouraging multiple actors to act in a socially desirable manner. The constitutional imperative, on the one hand, replaces and maintains, and, on the other, precedes and awakens the feeling and the idea that duties exist to demand their strict observance.

Everything that concerns the human being finds, in trust, one of the highest values of life, capable of creating a perpetual feedback loop of powerful suggestion. The peaceful coexistence of men is based first on mutual trust[15], and only later on, institutions such as justice or the police (Einstein, 1981, p. 101). For example, people's willingness to pay taxes depends on their faith or trust in tax administration (that the taxes collected will revert to universal goods and services). In logic, too, the appeal to the argument from authority is perfectly legitimate when the authority is trusted to support the conclusion (with a judgment supported by objective evidence). With the Constitution, as a great human institution, it is no different; public confidence -acquired from an institutional efficacy- gives strength to the essentiality of its rules.

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[14] "Example lives, animates and drags man along unwillingly" (Feuerbach, 1971, p. 141).

[15] "Society could not exist without trust in the righteousness and ability of others, and so this trust is deeply engraved in our hearts" (Fichte, 2014, p. 73).

The Constitution, as a modern conquest of considered democratic reason, replaces, in a certain way, the prevailing idea of the past, according to which the individual, in the search for security, sacralized everything charged with some extraordinary power, endowed with some protective quality. And as a modern sacred object, the *suprema lex* is inscribed with the following recommendation: "Treat with care", or *noli me tangere*[16]. It is for no other reason that it is surrounded by a series of prescriptions, limitations, and formalities to admit any change in its content.

Another aspect that resembles the Constitution with the sacred objects of the primitive past is the fact that, because of its overload of force, ritual precautions are not enough to approach it, but an attitude of submission and respect, that is, the "almost religious" conviction in its supremacy.

Nevertheless, without an institutional and judicial guarantee of observance of the constitutional imperative, the supreme document can only retain in itself the conditions of its own firmness. And here, not counting at least the secular and non-transcendent collective faith in its supremacy, there is little, or nothing, left of its normative force. The fact is that without the institutional mechanisms of observance, the concomitant subjective and collective element of the fundamental social belief in its superiority and the postulate of actualization, *a posteriori*, one cannot speak of an immanent (or intrinsic) constitutional normative force.

The normative force derives from the Constitution, it is a consequence of its normative mandates, but in an extrinsic relational way (it is not a pure "in itself"). Without this "extrinsic relationship", the immanence of this normative force is a mere idealization of a legal system established under the principle of self-sufficiency or of a radical simplification made to convince. If the belief in this postulate of immanent force persists, it produces, in parallel, the imprisonment of the Constitution in itself, within a principle of normative self-sufficiency made obsolete by the history of modern constitutionalism. Admitting this theoretical scheme without further consideration, the Constitution would describe a vicious circle: at its extreme, it would return to the beginning, since it would not find any element of commotion or contestation (*input*), capable of making it evolve. The immanence of this force is an always annihilating contradiction that self-destructs and reproduces a vicious circularity[17].

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[16] The point is that, once violated by unauthorized personnel, the Constitution loses the "manufacturer's warranty".

[17] This "vicious circularity" that reproduces a legal formalism can lead constitutionalism to become a victim of its own success.

The Constitution carries, with it, the power of its normative energy, but its efficacy (the "doing of an act") depends on the relations established with what is outside its text. It is not, considered in itself, an absolute and self-sufficient totality. Self-justified and self-centered, creating its own uncontrolled world, constitutional normative force tends intrinsically to extinction and cessation. The natural end of any movement or force, when not supported by external forces, is rest or collapse.

The interaction between social *inputs* and the Constitution introduces small and constant changes, if not in its letter, but fatally in its meaning, its spirit, and the way in which it comes to affect social dynamics. It is as if Heisenberg's principle of indeterminacy, which governs physical phenomena, returned its validity to this fundamental instrument of constitutionalism. Social mechanics participates (or influences, just as the observer influences the observed object), finally, in the assembly of the constitutional command in its contemporary functionality in the phenomenal world, "resignifying" it, or demanding a polysemic meaning compatible with the current stage of life's demands.

The theoretical conflict that exists between immanent normative force and relational normative force is none other than that between power and act, between the simple project of a concept and its full development and repercussion. No definition is made on intrinsic properties, but in view of a relational basis. Clearly, the constitutional normative force cannot be conceived as a mere intrinsic creation of the Constitution, but as a concept of relation and as a form and energy achieved by defense mechanisms[18] and by the constructive aspects of the postulate of actualization. It is not a divine work accomplished in a single stroke, but a *factum* dependent on a *continuum*.

The relentlessly semantic, symbolic or grammatical character of constitutional norms also helps consolidate the conviction that their normative force is not something definitively done or finished, but internally and necessarily subject to a characteristic becoming. Although it is not an accessory or subordinate concept, but one of the dominant focal points of the constitutional system, the normative force is drawn from a multi-relational context and obeys a constant mechanics of external impulses. And so, correctly understood and interpreted, it can consolidate the imposing essentiality of the Constitution before its subjects (governors and governed).

The Constitution is a linguistically formed instrument, although it retains an independent orientation, a tendency to transcend mere semantics, because if it is limited to it, it begins to share its

[18] Thus, without enforcement mechanisms, the constitutional norm and its equivalent normative force, in general, end up situated, so to speak, in an empty and ineffective whole.

limitations, since each word has only its own relatively limited field of action (even considering the expansive character of polysemy), beyond which its force is extinguished[19]. A constitutional norm brings together a plurality and a diversity of spheres of meaning in a linguistic totality.

But what does the multi-referenced postulate of constitutional updating consist of? It is the reflection of dynamic patterns of change in the social world or a process of identification, through the institutional mechanisms provided for in the Constitution itself. Hence the reason why it can also be called specular constitutional theory.

Daily experience, reflection, and contrast with multiple facts[20] are the fuel of this institutional action, the dynamic principle that moves the system. These impulses are what drive constitutional development, counteracting the natural tendency towards the internal normative inertia of the fundamental text.

The movement of change (or of specular updating of the constitutional instrument) is generated, spontaneously and naturally, by the flow of social *inputs.* This postulate may be imperfect, loaded with interests, desires, feelings, hopes, purposes, intentions, fears, and very subtle contradictions that influence the most important actions, but it will always be useful and necessary to enrich the constitutional spirit. If, on the one hand, it promotes the purification of de-democratizing elements, on the other hand, it promotes the identification of the constitutional normative content with the surrounding social structure.

The Constitution and society contain within themselves the projection of ideal possibilities and the operations with which they actualize these possibilities. But nothing is based on isolation or absolute independence. The institutional action of constitutional protection (the defense mechanisms) does not exhaust the set of socially necessary actions, lacking the commitment of the citizenship in the execution of the constitutional program.

No democratic institution can escape public control, under penalty of restricting the scope of democracy itself. The postulate of updating and social inputs constitutes the wedge of public

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[19] Constitutional language does not say it all; it is incapable of embracing social complexity and its richness in all historical (or temporal) spheres.

[20] Categorically, all being can only reveal itself through its opposite, order only in chaos, unity in discord, the human individual only through his relations with others (Dewey, 1964, p. 74). Thus, only by contrasting facts is the normative energy of a constitution affirmed; only through the obscurity of passions and interests does the constitutional normative order burst forth in all its omnipotence.

scrutiny that insinuates constitutionalism[21]. *Inputs* are, moreover, the umbilical cord, not only of the constitutional system, but of the entire legal system. With each social impulse a new degree of reflection on the constitutional text is inserted, giving rise to new interpretations and syntheses, creations, and recreations. Finally, a network of relationships is established that leverages the constitutional normative force, making it reach a high and true juridical significance.

The secular and non-transcendental faith previously alluded to (evidently devoid of messianic character) presupposes a shared conviction of ideas, interpretations, and values that make the constitutional imperative viable. Society needs firmly established paradigms (Gellner, 1996, p. 34), especially under the auspices of reason and cognitive capital rooted in the deepest layers. There is no healthy social order without some universally accepted rational norms regarded as second nature, enforced without the whip of fear, coercion or superstition.

The idea of Law, symbolized in its constitutional apex, if, on the one hand, strengthens the oppressed, on the other hand, disarms the possible oppressors. The force arising from this belief in the unshakable rule of Law is all spiritual and intimate, having the authority of the idea recognized as valid, true, and just. A relationally organized society cannot do without the aid of beliefs and convictions about the functionality and legitimacy of its fundamental institutions. To completely abolish these already assimilated beliefs would be to destroy society. Rifts and ruptures arise when, for one reason or another, these convictions falter.

Society needs rules that establish duties. Duties arise when there are social rules that naturally establish them (Dworkin, 2002, pp. 79-80). These social rules arise if the conditions for their practice are satisfied. These conditions are met when the members of a community behave in a certain way; this behavior constitutes a social rule and imposes a duty. Suppose a group of believers follows the ensuing practice: a) every man takes off his hat before entering the church; b) when asked why he takes off his hat, he refers to the "rule" that obliges him to do so; and c) when someone forgets to take off his hat when entering the church, he is criticized and even punished by others. Therefore, we have a duty and a tacit acceptance of that duty by the community. *Mutatis mutandis*, the community "has" a social norm that establishes the fundamental document as an imperative to be respected, welcomed, and observed at all times[22]. This norm, by creating a duty, removes the question of whether or not to respect the Constitution, in all circumstances,

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[21] This further reflects that society is not a passive actor of its own imprisonment in the "iron cage of the ubiquitous and invasive legal dimension" (Rodotà, 2010, p. 25).

[22] The acceptance of these standards is given as an expression of the order, rationality, justice, and security presupposed by the *suprema lex*.

from the more general realm of issues that we can debate in terms of what it is recommended that we do. The existence of a social rule in this sense is, therefore, the existence of the duty, it is simply a factual circumstance.

The two forces (of stability and progress) that animate the constitutional norms are directed and combined to emphasize the constitutional imperative in everyone's consciousness. They function as a litmus test to highlight the constructive energy of constitutionalism, supported and sustained by collective strength. The social rule of obedience to the Constitution is one of the many institutions[23] not established in law or *suprema lex* that arises and develops naturally by its own impulse, within a given community.

The definition of the normative power of the Constitution dissociated from the defense mechanisms, from the specular hypothesis, and from the conviction in the constitutional imperative (as a very characteristic and imponderable subjective element) may be logically correct, but rationally defective. To establish this immanent normative force without appealing to external institutions and mechanisms would be like "pulling oneself up by one's *bootstraps*" or acting as in the tales of Baron von Müchhausen, who managed to pull himself out of the mud by pulling his hair.

Obviously, we cannot confuse logical order with rational order (Cournot, 1946, p. 60). Rational order refers to the essence of things (considered in themselves), and it must be the faithful expression of the relations they have among themselves, by virtue of their nature and their own essence. The logical order refers to the construction of propositions (form and language), and is an instrument of thought, translating an artificial approach dependent on certain creations of our spirit. What is peculiar to reality, that is, its fluidity, its dynamism, its temporality, is inaccessible to logical order. In logical and geometrical terms, it is correct to affirm that the normative energy of the Constitution comes from itself; but from the systemic, multi-relational and practical angle of things, in rational terms, the scheme to be effective and feasible depends on other properties that are linked to the substantiality of the experience of life[24]. We have, therefore, an

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[23] In terms of political history, an institution is simply an established practice, the customary method of dealing with the circumstances of life or the burdens of government. There may be firmly established institutions of which the law knows nothing (Wilson, 1963, p. 12).

[24] The life of law cannot be logic but experience (Sowell, 2011, p. 156; Schwartz, 1979, p. 202). However, logic must remain one of the basic points of any system of legal interpretation. To interpret one part of a document - be it a constitution, an ordinary law, a contract or a will - in a way that is not logically compatible with other parts of the same document is, to say the least, to violate the canons of sound and objective interpretation.

artificial, verbal, and purely logical (immanent normative force) and rational (specular theory -or postulate of actualization- and conviction in the constitutional imperative) classification.

The application of legal norms is not and cannot be entirely logical; it requires a certain moral judgment. In the case of constitutional norms, there is still an inescapable political judgment, since all of them are open to the interpretation of the whole society. So, the role played by the Constitution is not easy to understand immediately by its executor.

Although the Constitution, through the mechanisms created by itself, manages to preserve itself (through its relationally extrinsic normative force), it is not capable, through a process that we could call "self-fertilization" (or normative self-sufficiency), to evolve and always deliver new solutions adapted to the moment, since it would lack external agents capable of providing the necessary stimuli (inputs); it would lack "connecting guidelines". It is no coincidence that any person affected by the violation of a right or guarantee granted by the Constitution has at his disposal a judicial remedy, by means of which the right can be restored (Schwartz, 1979, p. 197). Without such a remedy, we would have no means to ensure the normative validity of the Constitution or its postulate of actualization. Social (and/or institutional) action is constitutive of constitutional existence and has universal application.

Constitutional development is dualistic, determined, both, by its normative force and by the specular or updating theory (or even the "mechanism of constant adaptation"). It should be noted, however, that the normative force is impossible to maintain without the specular theory, so that these two constitutional properties can be used almost interchangeably, although they designate different stages of the symmetrical evolution of the Constitution. Let us not forget that each evolutionary or developmental step implies an addition of information to an already existing system.

No constitution evolves when it is launched (or retained) in a social vacuum: it draws energy from external stimuli (not always favorable to its structure, as happens with the "de-democratizing forces") and strengthens itself in the demanding clash of converging, overlapping or antagonistic forces, with minimal friction and waste. But it always seeks its raison d'être in the common lake called "social environment". The social foundation of the Constitution is such that, without it, its mandates would fall into the void: they would effectively become useless symbols engraved on a sheet of paper. If the fundamental document structures society, it is, in turn, shaped by it, through patterns that emerge according to changing circumstances of time and space. Ultimately, society provides the standards to which the constitutional context must ultimately conform, resulting in a social product (in a kind of "social symbiosis") and a product of its time.

And why does the Constitution change (or evolve) from a postulate of updating external to it? Because of the daily experience, reflection, and constant contrast with facts[25]. Social reality is discontinuous, with many ruptures, plural, dialectical, in short, endowed with its own mechanics of dynamic equilibrium. And to stabilize this fabric, the *suprema lex* needs to continuously develop, creating a scheme of possibilities and a normative scenario connected or permeable to the future, since life does not end in pure immediacy.

Without reflecting the dynamic patterns of change in the social world, no institution is capable of lasting for long. Everything today is variable, dizzyingly variable. Static structures belong to the past. And nothing is absolute in political or social things, except the inner morality of those same things (Barthou, 1946, p. 133)[26]. The movement for change is not generated by the normative force of the *Lex per se*, but naturally comes from social *inputs.* And so, it gains life and momentum towards the future, towards variability, solving the problems that arise, in a kind of structuring activity.

All constitutional mandates are always on the verge of passing from possibility to concrete act, from potency to *actus*, of becoming reality, passing through the postulate of actualization and the *inputs* that enter the system. Through specular theory, the future imposes itself on the present or becomes present. Without specular updating, constitutional normative richness is transformed into misery, its broad outlook towards the future becomes myopic, reacting only to the now, the next and the casuistry. Constitutional possibilities need to touch reality, at the risk of falling back into the formal void of their pure normativity.

Notions about our natural, social or individual environment are not definitive: all are in motion, all are provisional and ready to be replaced or improved at any time. Concepts, ideas and systems of ideas, purposes, and proposed plans are constantly being renewed, while those in use are revealing their defects and their positive values. There is no predestined course to follow. It is always conceivable that a new situation may arise in which our ideas, however firmly established, may prove inadequate (Bunge, 1981, p. 33; Dewey, 1960, p. 167). Therefore, properties such as fluidity, plasticity, adaptability, and actuality help to give longevity to a constitutional document, making it a "system of transformations" or "possibilities", with a tendency towards perpetuity.

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[25] It is from these contrasts and frictions, from the actions and reactions of individuals that social consciousness is formed, where Law is a direct product (Groppali, 1926, p. 66).

[26] The advance of social experience imprints decisive features on society and is echoed in the way the Constitution is interpreted and applied.

The Constitution does not lend itself to being a document of a dead generation governing the destinies of a living generation. It leaves it to each generation of men to determine what they will do with their lives, how they will lead into the future, and how they will establish the pursuit of personal and collective happiness. Each generation develops its own theory of the Constitution (and of life itself)[27]. The Constitution is a document forged for the living, not the dead. This was explicitly stated in Article 28 of the French Constitution of 1793: "Un peuple a toujours le droit de revoir, de réformer et de charger sa Constitution. Une génération ne peut assujettir à ses lois les générationes futures"[28].

Ideals of freedom from generation to generation cannot be fixed, says Woodrow Wilson (1963, p. 6); everyone feels existence in a particular way and only this conception can be the broad picture of what it is. Freedom fixed by an unalterable law is not freedom at all. Government is part of life, and, with life, it has to change, not only in goals but in practices; only this principle must remain unchanged: this principle of freedom, according to which there must be the freest right and opportunity to adjust. Political freedom consists in the fit that can best be practiced between the power of government and the right of the individual; and the freedom to change the fit is equally important to the ease and progress of business and citizen satisfaction.

To every stimulus or provocation, the Constitution offers a response. And every successful response (or decision) (in the sense of stabilizing social relations) produces a new imbalance[29] that requires new creative adjustments (it is more or less like the scientific method, in which every result is a source of new questions and new concerns), but always based on its normative context (this seems to be the destiny of every political instrument, producing instabilities that it seeks to dissolve). All social ills, or almost all of them, are the result of temporary misalignments in their ascending and evolutionary line: one problem is solved, another one appears, and thus the social fabric remains alive. The constant gain does not consist in an approximation to the universal solution, but in the improvement of methods and the enrichment of accumulated experiences (means of evoking what has already been and expectations of what is to come).

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[27] One generation is different from another in its way of seeing and feeling. "One generation laughs at what makes the other one cry" (Amado, 1960, p. 169).

[28] Translation: "A people always has the right to revise, reform, and modify the Constitution. One generation cannot subject future generations to its laws".

[29] An imbalance or a problem always establishes a dialectical movement of overcoming and perfection. "In social causation the cause does not always disappear when the effect is produced, but generally remains, being then modified by the effects. A given system of education may modify the commercial regime of a people and the latter, in turn, may modify the system of education" (Cohen, 1956, p. 347).

The "imbalances" or "instabilities" occur because the constitutional text is not a flat, smooth, and well-polished mirror, reflecting, with immutable objectivity, the reality before it, depending, for this, on the cognitive and interpretative scope of its applicators (not by chance, we said at the beginning of this essay, paraphrasing Thomas Jefferson, that "norms are worth what their applicators are worth"). But only in this way, from problem to problem, from solution to new solution, does the constitutional system rise and evolve, attracting the confidence of society, and, ingeniously, expanding its normative limits. This postulate of updating is a valuable asset for maintaining the contemporaneity (and, therefore, the functionality) of the constitutional system, dividing the scenario with an ethic of duty that leads to a convinced adherence to the constitutional imperative.

The elaboration and development of a constitution are conditioned by the historical and social structure. The fundamental instrument is not divorced from its time, it walks side by side, in the fullness of its variable, fluid, and concrete determinations. Each general term of the Constitution comes to have a meaning as diverse as the variety of changes in society at the time. A Constitution, like the American Constitution of 1787, for example, created in the age of ox carts and telegraphic communication, needs to be equally functional in these current times of extreme speed and digital profile, as well as the contingencies presented by future time.

Through its mechanisms of control and balance, the fundamental document is always ready to meet historical demands, since the sphere of reality that is life is essentially temporal and mobile. The logic that guides a constitution is not merely formal or theoretical, but the logic of the real, of a reality that reproduces itself in a *perpetuum mobile*, offering itself as universal and essentially dynamic. The constitutional gaze is forward, not backward; its spirit is always the spirit of the era[30], and the compass that guides it is life, with its infinite and present demands.

A constitutional system is, above all, sensitive to social stimuli, and responds to them by delivering stabilizing norms that, at certain moments, take a leap into the future[31]. With the *inputs*, the constitutional norms appear as the ultimate and finished expression of the solution, but they are problematized again at a later stage. These later problematizations account for constitutional development, making each new direction discover in them a new

[30] A constitutional norm cannot stop history (Rodotà, 2010, p. 51), it cannot stop time. The "constitutional idea" is supratemporal, that is, it is not limited by any relation to the spirit of an era. It is a title for absolute and timeless values.

[31] If the Constitution has any claim to "extratemporality," it is linked to the ability to navigate the possibilities shaped by the future.

normative factor, capable of contributing to a higher social reality. It is in this scenario of uncertainties, apparently refractory, where the normative force of constitutional norms is most clearly manifested.

From a legal point of view, there is nothing superfluous in a constitution. No waste or uselessness, following the universally accepted axiom that "there are no useless words in the law". Everything has a meaning and a goal. This scenario indicates, deterministically, its normative force. However, if the constitutional system draws its normative force only from the fundamental text, it runs the risk of closing in on itself, sterilizing, degrading over time (for lack of stimulus from the ***inputs***[32]) and losing the vigor of its internal complexity. It ends up being a sterile flower that does not bear fruit.

To restrict the normative energy of the Constitution to its formal normative elements, besides being a "vital fallacy" (since it presupposes a convenient belief without any hint of rational or empirical foundation), implies an inevitable impoverishment and a disregard of reality (decidedly polymorphic). It would also imply turning the Constitution into an object in itself. However, if this desired normative "self-sufficiency" is complemented (or enriched) by a more complex system that generates interconnections (*inputs/outputs*) or connects patterns with society, it gains elasticity, fluidity, adaptability, and actuality. The opposite is evident, as already said: without the postulate of updating, the Constitution has its normative force diminished or even destroyed, ending up becoming a "sheet of paper" or "noise without substance"[33]. It is the alchemy of decadence. The value or factual meaning, as Mario Bunge (1981, p. 11) says, assigned to formal objects (in this case, the Constitution) is not an intrinsic property of them. Obedience to the simple internal juridical logic of the Constitution without reference to the social context can empty it of meaning and scope.

On its own, loose, unbound, without ties, without mission, without defense mechanisms, and without social flow (*inputs/outputs*), the Constitution has no sense, nor normative force. And nothing more unnatural than a constitution stripped of its "essential possibility". It is like discarding a body, revealing a pure and dry bone, a *caput mortuum*.

In the legal world, nothing exists by itself, nor does it have its own cause. No concept can be determined in isolation. Everything is relational: a thing can only be defined (and really exist) in

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[32] Any inspection, political participation or legal requirement is a stimulus for any Constitution, and a perennial source of updating.

[33] Without the social ballast, there is a kind of "constitutional entropy", in which the *suprema lex* is sterilized and loses functionality, ceasing to create possibilities in order to consume them.

relation to others or through a chain of connections. Thought itself is nothing more than seeking these connections. Legal hermeneutics reveals this plot well. Nothing makes sense unless it is seen or placed in some context (Bateson, 1997, p. 25; Cournot, 1946, p. 106; Bunge, 2017, p. 353; Wagensberg, 1989, p. 46; Cassirer, 1985, p. 46; Schelling, 1950, p. 43)[34]. It is no different with the Constitution, the fundamental legal instrument of the State, which cannot fully manifest itself if it is not linked or connected with other means. Thus, the normative self-sufficiency of the Constitution threatens to nullify it, rather than exalt it, if it is not followed by institutional mechanisms that ensure its observance and enforcement (underlining its supremacy). Without these means, the ***lex*** is a vassal and a hostage of itself.

Normative force and institutional/social actualization, although separate elements, are connected and modeled on each other in a multi-relational framework. Like nature, a constitution can only build (evolve, progress) on what already exists, on an intrinsic stability. It does not exist or progress by itself, egocentric in its normative text or introspectively, but in the relationship it establishes with the constituent society (and its multiple actors), where it is rooted deep enough to withstand political storms. Therefore, a constitution is based on realities and leads to realities, highlighting its objective aspect.

In a social context, welcoming or refractory, a constitution has a broad meaning or little value. Therefore, not only the text itself, the isolated word, and the rule written on paper, have value or force, but the context in which they are inserted and by which they must act. The word "context" is an adequate word, necessary, to clarify or fix the value, meaning, sense, and weight of a constitution, as a legal and political phenomenon of a given society.

When we reduce the Constitution to a fundamental and intrinsic normative force, we lose the ability to understand the coordinating activities of the constitutional system as a whole. We overlook the existence of other ingredients that, together and relationally (or contextually), account for this imperative normative energy.

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[34] Reality, as Vietnamese astrophysicist Trinh Xuan Thuan (2018, p. 317) says, is the result of the participation of an unlimited number of conditions and causes that endlessly change. Phenomena are nothing in themselves. They derive their nature from mutual dependence. Reality cannot be considered fragmented and localized: it is interconnected and must be apprehended as a whole. The world, finally, is presented as a set of interconnected things. The "whole is nothing but the result of these relations" (Piaget, 1979, p. 11). In the same vein, F. Capra (1982): "The world is thus presented as a complicated web of events, in which connections of various kinds alternate, overlap or combine, and thus determine the texture of the whole" (p. 75). Many centuries ago, F. Bacon (Nicol, 1989, p. 72) already warned that human reason gives a substantial firmness to things that are fluid.

The normative energy of the Constitution enjoys, in the current constitutional context, a maximum degree of "guaranteed assertiveness"; it is indisputable and necessary to endow the package of norms with supremacy and essentiality (and not a set of moral sermons thrown on deaf ears), but this force is not generated by the simple movement around its normative axis; it is not self-irradiating or egocentric. Its essence and durability are not simply endogenous attributes. The factor of validity of this set of norms and producer of its juridical energy is not a non-historical or extra-historical hypothetical and fundamental metaphysical norm (resulting from an ideal legislator or any other fictitious political, economic or philosophical entity), but the people (owner of the originating power, the true rational legislator) and their multiple - and always renewed - individual, communitarian, and social demands.

The NHF (fundamental hypothetical norm) is the "metaphysical nothingness" that carries with it the stigma of internal contradiction. Nothing comes out of nothing (*ex nihilo nihil fit*). The norm may be irreducible to the fact (as Kelsen asserted), but its application is not. The legal structure in the form of an algebraic network fails at its apex, in the norm that underlies the legitimacy of the whole, and, in particular, of the Constitution. What is the "fundamental norm" to adhere to if it does not result from the act of "recognition" by which the subjects, by right, confer on it its validity (Piaget, 1979, p. 86)? (Piaget, 1979, p. 86). Legal science is full of abstractions of this type (and the weight of these metaphysical notions contributes to a certain confusion in its language), but around this last and fundamental abstraction, a future crisis of legal positivism was already announced.

Without the vector of individuals, the community or society, as possessors of the original power, the rational and moral justification for the existence of the legal order and the aspiration to social justice is lacking. Without this reality as the backdrop of public institutions, the idea of justice would be no more than an abstraction for the delight of theoreticians and not a historical fact that permeates the real order. There is no denying, therefore, the relationship that is established between human teleology and juridical etiology. On the one hand, we have the permanent feeling of justice, and, on the other, a variable concept of what is just; there is social will and an individualistic and arbitrary action of the State. Everything seems to lead to ends (society) and means (State and institutions).

Normative force does not appear *ex nihilo*, but by virtue of a historical construction that combines defense mechanisms, postulate of actualization, and collective (and institutional) faith in the constitutional imperative. As this special force is a notion that can only be defined in relation to these three variables, it has no reality of its own (it is a fertile fiction, like so many others created by enthusiastic followers of legal positivism). And more: the normative force arises when the

referred variables become effective (we have, then, a maximum of normative force, the measure of the measures). So, if all of them are missing, there is no force; if one or another is missing, its scope is reduced (we have a minimum of normative force).

The "green tree of life" is far superior to the "gray theory". *Res non verba* ("actions and not words"). Thus, the constitutional normative force lies in action (interpretation, application, mutation, etc.) and not in the formalism and virtuosity of the imprisoned word[35]. It is possible to affirm that the Constitution actualizes its normative force through social (and political) *inputs* and through its multiple relationship with other mechanisms. Therefore, the true notion of constitutional substance is drawn from action and "uneven, irregular, and diverse" life, situated outside its pure normative context. This operates a fundamental scheme that is being filled with ever new content as ***inputs*** lead to constitutional application and incidence.

Without this social support, the Constitution cannot go beyond its roots. But one does not exclude the other (in fact, they complement, correlate, interconnect): the normative force of the fundamental law and its postulate of actualization. There is a co-evolution of the constitutional system and society: it is a self-reinforcing relationship. The contributions of society enrich the constitutional spirit and the constitutional products consolidate social changes. But the system is much more what goes in and what comes out[36], and what remains is the normative structure endowed with potential effectiveness.

Only the people -this sort of "ultimate weapon"-, whether in stability or in times of deep crisis -through their constituent, elective, supervisory or resistance power- have the undeniable, inalienable, and irreversible right to change, modify or reform the foundations of the fundamental political structure when their protection, security, prosperity, and happiness so require[37]. The people will always be the best guardian of their own liberties (besides being the judge of their own cause and responsible for their own destiny), and, as a general rule, the most reliable, be-

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[35] "Life does not surrender to law, it does not allow itself to be used. It can suffer it, it can favor it or accompany it, it can be imprisoned in its symbolic cage, it can even be annihilated, but it continues to remain there as a testimony that there is something that is always beyond the law, that is capable of establishing its limit at all times" (Rodotà, 2010, p. 66).

[36] The structure of what comes in (demand, *input*) must somehow reflect the structure of what goes out (decision, *output*). The Constitution, by issuing the *output*, metabolizes the novelties derived from social dynamics, consolidating itself as a dynamic part of social change.

[37] The people can change the Constitution, but as long as it exists and fulfills its functions of stability and variability, the people must comply with its determinations.

cause, as common sense recognizes, "the people know where the shoe pinches and what are the grievances that weigh most heavily on them".

The more the exercise of political power is exposed to innumerable temptations, the more powerful motives must be given to those whose task it is to combat them. In this sense, public vigilance is the most constant and universal of all those who have this function. The public forms a tribunal whose value surpasses all others put together (Bentham, 1991, p. 72). Its decrees may be despised, or its opinions may be seen as fluctuating and divergent, destroying each other; but this tribunal, though liable to error, is incorruptible, ceaselessly aspiring to education, arresting all the wisdom and justice of a nation.

Popular sentiment, whether of approval or censure, is a basic factor in definitively influencing institutions and decisions. Among democratic institutions, there is a special sensitivity to this sentiment (or fear of the "great beast"), a tendency to respect the social mood and to constantly submit to the test of legitimacy. When it manifests itself (through marches, street demonstrations, etc.) collective action reflects a power incapable of being contained.

A constitution, like any human artifact, is necessarily imperfect (there is no one hundred percent effective means to avoid inconveniences in human affairs), but it is endowed with perfectibility[38] through debates, struggles, difficulties, and constant vigilance (the creative process of Law, in itself, involves struggle and confrontation that are part of a broader context of cooperation). The social environment and its dynamics exert a persistent selective pressure on the actuality of constitutional norms, indicating their evolutionary direction and their essential mutability.

Public control and the demand for accountability to the true sovereign (the people) imprint new nuances on the constitutional edifice. The conflicts and contradictions of a mobile, diversified, and anonymous society find better resolution in the mechanisms of a system based on a dynamic balance (normative radiation + social vitality) than in rigid decisions guided by very traditional legal formalism.

Constitutional reality, because of this social ballast that gives it life and dynamism, presents itself in layers rather than in flat and definitive surfaces, bringing together, in a system (the constitutional system), properties that its parts or components lack. The constitutional system, for example, is open and fluid to an evolving interpretation, while the constitutional text (in itself, in its semantic and normative format) presents a geometric formalism. The constitutional text

[38] One of the great virtues of the Constitution is not its supposed perfection, but its perfectibility. And that is why it harbors an ingredient of change that cannot be eliminated.

does not cover everything, there is much outside it, but given its plasticity, its scope can be expanded. An example of this is the fundamental rights and the modifying clause provided for in article 5, §2 ("The rights and guarantees expressed in this Constitution do not exclude others derived from the regime and principles adopted by it, or from international treaties to which the Federative Republic of Brazil is a party").

A constitutional system is an open and living system. Expectations, needs, and interests flow into it (*inputs*), while rational decisions and mandates flow out (*outputs*). There is a vagueness in the Constitution that needs to be filled in; contradictions that defy precision; exaggerations that require moderation; and all of this begins to spin in an endless stream of updates (unfinished course)[39]. This constant flow reveals the astonishing capacity of the constitutional system to improve itself, to evolve and cross time (to last, at last). Evolution that takes place in the light of reflection and experience drawn from a social *locus* through an institutional conduit.

Around a written Constitution, Woodrow Wilson (1963, pp. 18-19) points out, a set of practices develops that come to modify the written stipulations of the system in many subtle ways, becoming an instrument of opinion to effect a slow transformation. Otherwise, the written document would become too rigid a garment for a living organism. In this special way, institutions are creatures of people's opinions and habitual practices. Every man's thinking is part of the vital substance of institutions. By changing his thinking, the institutions themselves can change. That is why citizenship is so responsible and solemn.

By integrating an open system, the Constitution is evidently in a state of fluidity, it is a living Constitution (as in Bagehot's expression). The norms, concepts, and principles are configured to govern disparate situations that arise over time, compatible with the irregular paradigm of postmodern society[40]. At the same time, the only thing that can be said with certainty is that we are going through a tremendous evolutionary development, destined to produce changes in the defense of constitutional rights as profound as those that will occur in society at large (Schwartz, 1979, p. 218). As an open system, constitutional law manages to survive and traverse all these produced instabilities.

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[39] In technical terms, this is called an open system (drawing attention also to the "open texture" of constitutional provisions) (Hart, 2009, p.175).

[40] The Constitution presents norms with meanings sufficiently broad and elastic to allow activity to life and circumstance (Wilson, 1963, pp. 45-146). It is not a mere legal document, which can be read as if it were a will or a contract. It is, of necessity, a vehicle of life.

The Constitution is more constructive than a passive reflection of society; it implies the creation of rationalizing alternatives, which go beyond the established and the momentary demands of the social environment. Thus, the following are fruitful properties of a constitution: fluidity (capacity to face new problems), plasticity or elasticity (capacity to evolve), adaptability (to expand and contract constitutional standards to satisfy the mobile demands of society), coherence (free of insurmountable contradictions[41]), integrity (free of gaps), and actuality or contemporaneity (given the continuous interpretation and reinterpretation of new facts through created mechanisms).

3. ANTIDEMOCRATIC FORCES AND THE CONSTITUTIONAL IMPERATIVE

Uncompromising enforcers of this culture of respect and submission do not shy away from constitutional violations that further their own interests (*sinister interests*) and their short-sighted manipulations. Derivative interests so well defended that they become masterpieces of cunning. These interpreters/applicators seem to have the power to waive all rules and obligations of morality, the moment they interpret constitutional provisions as they please and apply them according to their own metrics; individuals for whom there is no other center in life than self-interest, spurious traditions, and accidental circumstances. But this cannot be a reason to be discouraged from faith in the constitutional imperative. It is known that every regime of freedom provides the malignant instincts of human nature with a greater number of means to manifest themselves[42] (Croiset, 1918, p. 226), and that in all things human one sees lights and shadows. Forces contrary to the Constitution will always exist and will always be lurking, but the decisive factor is not in this disastrous performance or expectation of action, but in the ability of the institutions founded by the fundamental text to resist and impose limits on them. After all, rules are only broken when we can do so with impunity.

If everything that serves to make democracy possible is truly democratic, by the reverse reasoning, everything that works to make democracy impossible is characterized as a de-democratizing force. In a scenario in which the majority has no or little conviction in the constitutional imperative, the worst (constituted as a minority) will be the only ones capable of feeling (and leading) intensely these de-democratizing forces of which we speak.

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[41] All constitutional rights must be subject to the requirement that all their parts be mutually consistent, and consistent in themselves.

[42] A democratic society is more predisposed than other societies to the recognition of a plurality of values. It is also more vulnerable than other societies because of the potential and latent conflicts in such plurality (Hook, 1964, p. 128).

These malign instincts ("de-democratizing forces") exist before, during and after any constitutional and democratic regime, but democratic freedom creates a contrast that makes them stand out in the light of day. Publicity unlocks the role of conservative democratic forces, forcing the "officiants of mystery" to submit to the forms provided by law.

Lions are not united by cobwebs or silk threads. To confront these de-democratizing energies, it is necessary to appeal to the normative force of the Constitution, duly supported by faithful application. A strong standard is of no use if it is not effectively enforced. Checks and balances are fundamental words for a healthy and lasting government. This binomial has, in a republican constitution, its ***locus*** of guarantee and protection, and, through it, democratic process and authority are preserved.

Under the influence of this constitutional imperative, the interpreter and the applicator of the fundamental norm are obliged to have a high degree of devotion, and they cannot fulfill their mission if they do not believe in it, passionately and firmly. This "devotion" is necessary as an essential precondition for various social activities, such as philosophical studies, scientific research, and for the normal conduct of life.

4. CONSTITUTION AND RESTRICTIONS TO THE POWER OF THE MAJORITY

A basic function of the Constitution is to extract certain decisions from the democratic (political) process, or to condense objective factors of power in its entrails. That is, precisely why the fundamental law does not obey a routine tradition (*wisdom of our ancestors*), but it evolves as a living organism ("living Constitution"), *pari passu* with perpetual social movement. A constitutional system may be theoretically beautiful, entirely geometrical, but it will always be a dead and entropic system if it is not nourished by the ever-new demands and experiences of life[43]. In this sense, there are certain issues that, because of their very high relevance, are extracted from the vicissitudes of destructive politics and placed beyond the reach of shifting majorities and the bureaucratic body (with the ever-present subculture of lateral corruption), and that are enshrined as principles to be respected by the courts (the so-called "stony clauses"). Everyone's right to life, liberty and property, freedom of speech, freedom of the press, and other fundamental rights cannot be put to a vote: they do not depend on the outcome of any election, nor on the mood of majorities or empowered minorities, nor the unanimity of citizens.

[43] Humanity, with its multiplicity of ever new formations, its struggles and its ever-new experiences, with the discovery of new values and purposes, advances more and more (Husserl, 1962, p. 59).

Fundamental rights do not belong to us as members of a given political community, but as human beings, and therefore the stone clauses stand as a barrier against public authoritarianism and private arrogance (Rodotà, 2010, pp. 27-36). In order to defend the "humanity" of Law and protect it from the risk of becoming an instrument of aggression against man, constitutions renounce their characteristic openness to possible future changes and try to distance Law from the vicissitudes of history, pointing out, once and for all, certain areas into which Law should never penetrate[44].

Stone clauses constitute a legal mechanism to balance the absolute power contained in eventual majorities (Przeworski, 2010, p. 245; Adams, 1964, p. 180); they imply a readjustment of the boundaries between politics and law. The majority tends to waver from one day to the next and to swing like a pendulum from one side to the other. Strictly speaking, the hard core of the Constitution is intended to prevent the will of the people, at any time, from freely or arbitrarily reaching or ascending.

Democracy is not the absolute rule of the majority of the moment[45], nor is it a suitable setting for the granting of unlimited powers. All sorts of experiments show that large numbers of individuals oppress many other individuals; parties often, if not almost always, oppress other parties, and majorities, almost universally, minorities. All that this observation can mean, in relation to any semblance of the facts, is that the people never unanimously agree to oppress themselves. But if one party agrees to oppress another, or the majority the minority, then the people oppress themselves, because one part of them oppresses the other.

In fact, there are some individuals whose lives and whose narratives demonstrate that, in every thought, word, and action, they consciously respect the rights of others. There is an even larger group who, in the general content of their thoughts and actions, reveal similar principles and sentiments, and yet who frequently err. If, on the basis of this evidence, we admit that the majority of men are under the sway of benevolence and good intentions, we must confess that the great majority frequently commit transgressions; and what hurts more directly, not only the

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[44] But for those who do not credibly trust in earthly good intentions, there are some questions (Rodotà, 2010, pp. 36-49): are we facing a new legal technique or a new delimitation of the territory of law? Moreover, at the moment when the constituent seems to be imposing its own limits, is it not incurring in an extreme manifestation of omnipotence, with the indication of a series of matters whose legal form must be irremediably determined, and, therefore, absolutely imposed on the social organization? Are we before the maximum guarantee or the maximum expropriation?

[45] The absolute dominance of a given majority ends up being the absolute dominance of the head of the majority.

majority, but nearly all, confine their benevolence to their families, their relatives, their personal friends, their village, their town, and few extend it impartially to the whole human community. Accept this truth, the question is decided (Adams, 1964, pp. 133-134). If a majority is capable of preferring its own private interests or those of its families, it would be wiser to have in the Constitution certain rights which are immune from the moods of the majority in turn and which extend to the public good and to all without distinction, without appeal to private and partial considerations.

5. THE SENSE OF THE PREDOMINANCE AND SUPREMACY OF CONSTITUTIONAL NORMS: THE CONSTITUTIONAL IMPERATIVE

In the past, the field of law was almost residual in relation to religion, ethics, social customs, and nature. Today, all these fields are colonized by legal imperialism, with the constitutional instrument at its apex.

Constitutionalism takes over the realm previously reserved exclusively for religion, beliefs, and primitive taboos. The narrative undergoes a profound change, previously translated into a fantastic and supernatural style, it passes to a rational discourse, obeying the canons of interpretative logic, and, more recently, to pondered democratic reason. The "religion of legality", of constitutional canons, in which the people express their impulses through institutions created by the constitutional system.

Indeed, it is a question of religion that we must speak, in fact, if we want to express that respect for the law must dominate men and unite them in the same sentiment (Pécaut, n.d., p. 209). Whatever the illegality, it is always the acceptance of the reign of injustice, of arbitrariness. If it is generalized by imitation, there is no more active cause of moral and material decadence for a people.

A constitutional system that does not awaken and foster a fundamental belief in the value of its observance and respect - a kind of *constitutional catechism* - ends up not establishing the necessary conditions for the valuable balance between variability (by gradual progress) and stability in society. Much of its normative force is lost in the absence of this fundamental belief. The true government of men is not exercised simply by laws, but by the values they defend, and which govern their lives and inspire their laws.

A people that believes in the virtue of the supreme binding force of constitutional norms is ready to recognize their value and to deposit its obedience to their just application, legitimizing, drag-

ging, the entire legal system, and the system of government itself. The understanding of the dignity of the human being rests, in legal terms, and, ultimately, on the articles, subparagraphs, and paragraphs of the Constitution. Even in failure or defeat, it is easy to console oneself when one knows that the duty, arising from the higher law, was fulfilled to the end, remaining faithful to constitutional traditions and values.

This lively sense of freedom, drawn from the certainties conferred by the culture of constitutional respect and the accumulation of interesting (and noble) truths, raises citizens above themselves, inspiring in them a completely new ardor of obedience, neither the fruit of free will nor of sheer force, but of a free, lucid, and reasonable will, only attainable when united in a community pursuing a valuable common purpose. In the face of conflicting circumstances, they are equal, and each one, happy to fight for his or her own freedom and rights purified in the constitutional light, reveals himself ready to make all sacrifices. In the political struggle one cannot reap benefits without facing risks (Barthou, 1946, p. 27). This resilient spirit is only achieved when people perceive, deep down, a generalized submission to the constitutional faith on the part of public institutions, especially those predisposed to be the first bastions of guarantee (the constitutional guardians).

This "constitutional faith" cannot be visualized only from the central gaze, it requires a peripheral or tangential gaze, since the Constitution draws its strength from elements of actualization found in society (and not in its own formal body, given the evolving and mutable character of these elements of actualization). Formally, the constitutional text may even be geometrically beautiful, theoretically robust, but it will be a very weak construction if it is not reinforced by the substance of social life, by its *inputs*. The eternal flow of things despises products without essential connection with multiple life, derived only from arbitrary and incomplete conceptions of reality. Therefore, constitutional faith is the crowning of a diverse, tentacular, and evolving edifice, which in its extent, breadth and depth must be grasped and subjected to constant analysis.

It is necessary to understand, from this perspective, that the Constitution is a historical and cultural phenomenon, and, as such, it evolves and advances in time, although its letter remains intact. And it advances through multiple and apparently conflicting impulses, but which end up being cooperative in the great project of constitutionalism. Without the constitutional ***vis attractiva***, desires, impulses, and purposes would blindly move in all directions and get nowhere. They would be a pure waste of energy, without order or concert[46].

[46] It is one of the paradoxes of life in a free society that actions of such an apparently destructive nature, because of the content of the inherent conflict, can result in an act of creation, of contribution to the great constitutional work.

If the feeling of predominance and irresistible supremacy of constitutional norms and principles does not find fertile ground to spread its roots and nurture the ever-expanding legal culture of a country, it opens a wide path for the dissolution of the entire political and social order[47], for a war of all against all, for a state of affairs in which only pure selfishness and self-interest have the last word. In the worst-case scenario, this culture helps measure the resilience of the legal system in relation to movements (and counter-movements) that tend to disrupt or destabilize it.

The more or less strong feeling of this constitutional culture can generate a virtuous or vicious circle; thus, the greater the respect and reverence for the fundamental norms, the more perfect the social order will be, and the lesser the feeling of constitutional predominance, the more fragile the resulting order will be. Moreover, in a social or institutional environment composed of individuals or agents of strong authoritarian personality (whose legal positions are imposed arbitrarily and according to rigid categories), a system of popular government finds it very difficult to survive and prosper.

The constant and linear institutional observance of established constitutional standards, little by little, creates a culture of respect for the Constitution that penetrates, by continuous infiltration, into the deep layers of the people. And this makes these people experience a more powerful form of freedom, derived from the certainty of the limits and restrictions imposed on all. Once this path is opened, it is easy to penetrate popular thought, bathing it in moral and political education. It would be unwise to generalize this observation into a rigorous law of universal application, in the hope of obtaining the desired effects.

The lack of affection for or blatant detachment from constitutional formulas manifests itself under two prisms: 1) opposition to the actual content of constitutional provisions (which generates, for example, the paradox of the superiority of the law over the Constitution); 2) use of certain rights provided for in the Constitution in a manner contrary to the true meaning they present. It should be noted that, in terms of the Brazilian legal reality, constitutional disaffection is part of a broader spectrum of crisis of some essential concepts of legal dogmatics: constitutional rigidity, legal certainty, non-retroactivity of laws, principle of legality, etc.

One of the functions of the legal system is to draw clear limits to the performance of its institutions. Clarity is immanent to the delimiting power of Law and is linked to its concept of compartmentalization of freedom. If there is a framework of fundamental rights inscribed in the Consti-

[47] "A state whose laws are poorly enforced and where endemic civil disobedience prevails is a sick state in the process of decomposition" (Polin, 1976, p. 63). Losing confidence in the supremacy of constitutional norms is a very serious matter, as it calls into question the very system of government itself.

tution, there is a corresponding duty of its institutions to comply with it and ensure its fulfillment in any situation. Only in this sense will we have a culture of effective constitutional supremacy. The Constitution is only fiction when it is seen, for one reason or another, as a "sandcastle" or an abstract representation of a distant ideal.

It is important to note, realistically, that the Constitution, although it contains an extensive list of fundamental rights, does not have a formula capable of choosing one in the face of conflicting values. It values both freedom of expression and the right to privacy in the same normative space. It does not tell us, however, which of the two rights has priority when they clash. It expresses the values that will guide the application of general norms and prohibitions. But in no way does it formulate specific priority guidelines when these values, rules or prohibitions conflict. The Constitution, like any human work, is fallible and has its limitations (Hook, 1964, p. 54), and no matter how many times it is modified, it is not a recipe document on how to mix or balance individual ingredients.

In any case, the limits drawn by the legal system, having at its apex the fundamental law, confer unity and definition to the national community contained within the sphere of the State. But it is necessary to warn that a country, a nation, a people, is not only stitched together by a constitution, a legal system, and adequate political institutions. Culture cannot be confused with institutions; the culture of a people is more than the sum of its political, legal or economic institutions.

The normatively arranged Constitution, when not strengthened by other aspects of society, is really restricted to the quality of a superior exhortation. It may not be possible to enumerate, in such a brief study, the prerequisites of a rule of law[48] or a stable democracy, but certainly reverence for the constitutional domain is one of the most important. If a given people does not have a constitutional culture or has a fragile version of it, not attributing due importance to the Constitution and not being able to understand it as a supreme and stable norm (and endowed with stabilizing force), it makes democracy an unviable principle or creates a dangerous fissure in the rule of law.

The establishment and stimulation of such a culture or sentiment, which is not as difficult to achieve as one might imagine, will help put an end to any conflicts arising from selfish motives between the interests of individuals, society or state, reducing the main cause of crimes, vices,

[48] They are logically derived from the rule of law: hierarchical structure of the legal system, affirmation of fundamental human rights, existence of legislation for legal personality, responsibility of the public administration and jurisdictional control of legislation (Diaz, 1972, pp. 29 ff.).

arbitrariness[49], and privileges. The refinement of this culture provides a polyarchy (majority rule) as a special place for peaceful resolution of conflicts between different interest groups.

6. CONSTITUTION AND POLITICAL LITERACY OF THE PEOPLE

It is through the institutions founded by the Constitution that the opportunity for learning and the political literacy of the people is opened. The collective common sense is nourished, to a great extent, by the public affairs established and regulated in the *lex suprema*. The concord and the spirit open to dialogue, if not found in the constitutional foundation, are certainly strengthened in the letter and spirit of a democratic Constitution, where everything is organized with a view to peace and the peaceful resolution of conflicts.

The political literacy of a people is not a fait accompli, a finished product, nor a plant imported from nowhere, but a *work in progress*, a process, a *continuum*, which is produced in the constitutional soil and expands in the environment of democratic freedom. It is a battle that is won in the long run. In this process, the people become accustomed to deliberate (criticize, induce, judge[50], monitor, participate or vote) on major public issues, leaving the typical immobility of an existential mediocrity that sees only the immediate advantages and entering, through the habit of effective political participation, in the field of free, bold, and responsible ideas.

The habit of democratic freedom develops the natural intelligence of the people, as history proves in relation to the ancient Athenians. And it provides, without a doubt, an effective weapon for the empowerment of the people, especially in the face of the traditional elites (the "well-born") who are accustomed to rule. In the absence of this *continuum* of education, in the end, you do not have a people, but a stupid population, docile and submissive to the rantings of the demagogues of the day[51]. A democratic government, as Madison said (Chomsky, 2002, p. 60), without popular information or without the means to acquire it, is nothing more than the Prologue of a Farce or a Tragedy; perhaps both.

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49 It is worth remembering that Law is the set of conditions universally required for the free will of each person to be reconciled with that of others, containing them within previously defined limits.

50 As Aristotle (1995, p. 29) says, when the people are masters of judgments, they are masters of the city.

51 Emerson's description of the masses is emblematic: (quoted by Warren, 1975, p. 21). "Stop this hypocritical talk about the masses. The masses are coarse, deficient, unformed, pernicious in their demands and influence... I do not want to concede anything to them, but to tame them, subjugate them, divide, and disintegrate them, and extract individuals from them... I want no masses, only honest men... and no millions of gin-drinking, short-witted lazzaroni. I do not want the praise of the masses, but the vote of isolated men who place their honor and conscience in it."

> Just as the mind, when kept in use, presents inexhaustible powers, so a people that continuously participates in public affairs under the protection of its Constitution expands its political culture and becomes the great guarantor of freedom. In this specific aspect, the Constitution is, indisputably, an emancipating, mobilizing and transforming guide, definitely, a guide of civilization.

In a people immersed in this process of learning for a long time, the public spirit will rise to a greater height, for the more men are educated about public interests, the more they will have an exact notion of how important they are. Good ideas will be more common, and bad ones will be publicly questioned; there will be a greater mastery or vigilance over the deceptions of demagogues and the illusions of impostors (Bentham, 1991, pp. 74-75). In all classes, the habit of reason and moderate discussion will penetrate, with mutual respect and tolerance of difference.

A strong and rigorous public opinion, such as exists in some places with austere customs, supports the individual, supports good public actions, and disapproves of bad behaviors (Pécaut, n.d., p. 57). If opinion relaxes, becoming excessively indulgent, the individual ends up giving in to himself and his first impulses.

With universal suffrage and public education, ordinary people, normally apathetic and passive, become organized and empowered, trying to enter the political arena seeking to guarantee their interests and demands, threatening the *status quo*, the *establishment*. This gives rise to a curious phenomenon among the ruling elites who, as a rule, call it a "crisis of democracy". The antidote to this "panic fear" was the creation of means of advertising and capturing public opinion, putting the public in its rightful place as spectator and consumer of the action (not participant and co-producer).

Through propaganda resources, the minority extracts "consent without consent" from the majority. A system of remote control of heads and hearts is created, which seeks to "first captivate men's minds and then enslave their bodies" (Hankin, 1963, p. 10). A techno-tronic era of conditioned men, of programmed and happy robots. Defeating this system of disinformation means reinforcing the trenches of information, active publicity, and democratic opinion (the result of debate and contradiction).

However, the people are not a "great beast to be tamed", as Alexander Hamilton said (Chomsky, 2002, p. 52); it needs, rather, to be respected and welcomed, turning from a passive spectator into a participant in the political arena. And a people that is not "tamed" (in the high sense of the word) by decree, but by the force of a cultural mutation.

Society, in terms of the degree of political participation, is divided into three classes (Bentham, 1991, p. 81): 1) the first, more numerous, cares very little about public affairs, having neither

time nor disposition to read and discuss; 2) the second is composed of those who create a judgment, but a borrowed judgment, on the opinion of others, without having the capacity to form a judgment for themselves; 3) the third, less numerous, is made up of better educated individuals who judge for themselves, according to information gathered from their own source (they are opinion-forming elites who supply the second class).

There are only three ways in which a population, in essence inconsistent, can become conscious, enlightened, and functional to its political role, becoming the nobility that is conventionally called "people" or society composed of responsible individuals: 1) by political education; 2) when it is wisely directed or guided; 3) when there is a free press. That is, behind every great people there is a good statesman, a free press, or a constitutional system that provides a ***locus*** for continuous and stable political learning. A place where the people acquire knowledge of their rights and wrongs, as well as the power to exercise the former and correct the latter, always within the geometric lines drawn by the Constitution.

There are no separate or incommunicable parts in politics or society, however distinguishable. It is up to these three political categories (constitutional system, statism, and free press) to employ all measures and take all possible precautions to propagate and perpetuate this healthy political literacy. And that implies a continuous, patient, and interactive work, generation after generation. Educating a people does not require haste and is not something that can be accelerated.

The satisfaction of devotion to the constitutional imperative is the golden rule that distinguishes a good statesman. It is not required that a good statesman be a "benevolent philosopher" or an "enlightened sage," but that he be able to distinguish, clearly and in all circumstances, between private interest and public duty, and be guided by the latter. Moreover, good statesmen and managers have ample information about the nature of men, the needs of society, and the science of good government. Without them, and without the beneficent influence they exercise, the people may act unjustly, frivolously, brutally, barbarously, and cruelly like any other tyrant, as the annals of history sadly prove.

Living people do not need a master but a guide (Wilson, 1963, p. 28). When the government is the master and the people the subject, society remains asleep, formless, inorganic, without self-consciousness, without knowledge of the interests and power it possesses.

The press, whose freedom is jealously guarded in the Constitution, is another valuable means of political education for the people, being intimately linked to democracy. Through education and schools, the press and other means of communication, the common man becomes aware of his rights and of his power to organize in the defense of his interests (Becker, 1947, p. 86; Simon,

1951, p. 137; Duverger, 1975, p. 238; Hankin, 1963, p. 14). In addition to these services, the free press plays an important role in protecting society against abuses of power (Viñas, 1983, p. 202). Consequently, it is prudent not to create obstacles to the distribution of material produced by the press, but, on the contrary, to encourage the circulation of books, magazines, newspapers, and periodicals.

On the role of the press in a large democracy such as the United States, it is worth quoting the words of Merrick Bobb (2021):

> "A free press with an insatiable appetite to hold elected and appointed officials accountable is indispensable in a properly functioning democracy. The American press has a well-deserved reputation for its investigative journalism, skepticism, doggedness, and boldness in the face of intimidation. The press has brought down Presidents through exposure of scandal. For example, President Nixon ultimately resigned after the Washington Post had exposed Watergate."

The great risk of the press is to be co-opted by political or economic groups (losing its independence) and to surrender to economic demands, turning facts into articles for the market. But since the education of the masses is not a monopoly of the press, other actors can counteract any imbalance resulting from liberal democratic theory.

Ignorance, whether at the individual or social, scientific or political level, is one of the main causes of ruin for individuals and societies. Whenever general knowledge and sensitivity prevail among the people, arbitrary governments and all forms of oppression proportionately diminish and disappear. Political participation, leveraged and nurtured by knowledge in circular relation, has been, whenever there has been freedom, the cause of freedom itself. The informed consent of the governed is the cornerstone of a free and democratic society.

The point of cohesion of this informed consent is guaranteed by the collective confidence in the validity of the Fundamental Law and in its capacity for stabilization and orderly progress. John Adams (1964, pp. 4-12), in a classic political study, stresses that liberty cannot be preserved without the existence of general knowledge among the people. Moreover, the people have an indisputable, inalienable, and irrevocable right to that other feared and envied knowledge: that of the character and conduct of their rulers. These are but representatives, agents, and administrators of the people; and if the cause, interest, and trust are insidiously betrayed or recklessly squandered, the people have a right to revoke the authority which they themselves have surrendered, and to constitute other agents, representatives, and administrators. And the preservation of the means of knowledge among the lower classes is, to the public, of greater importance than the property of all the rich men in the country.

All civic education and training must have, above all, practical purposes in the management of public affairs: reform of abuses, correction of errors, and elimination of prejudices. Nothing corrects the political course better and more quickly than the severity of judgment of a nation well instructed and exercised in the discussion of public affairs.

If the people are universally and profoundly enlightened, they will hardly be deceived by political artifices. And this contributes to create a virtuous circle: the enlightened elect capable and worthy rulers; and good statesmen, with their wise resolutions and adapted to the circumstances, contribute to the fullness of the citizen, supporting the freedom of the press as a necessary impulse to public liberties.

7. FINAL CONSIDERATIONS

Law contains moral power, as well as being a technique at the service of ethics - at least a considerable part of it - and of freedom. In the case of the Constitution, this moral power lies not so much in its supposed intrinsic normative force, but in the belief, distributed among all those who are subject to it, in the irrevocable predominance of its provisions and mandates. Like any social institution, the *suprema lex* is doomed if it is not accepted by the collective conscience or if it does not impose itself on the will as a force to be respected and protected.

The Constitution is a versatile document, as it functions as a pendulum that swings between stability and variability, order and freedom, tradition and innovation. It is a document that affects not only the present, but also the expectations and possibilities of the future, as part of a system configured to break time. The commands and instructions to create and validate the entire legal system come from its norms. It is like a basic project of the entire legal structure of the State (it is the "maximum content" of the structuring of the rule of law); the next step is to precisely execute the instructions contained in the constitutional text. At this point, the legal, political, and social faith in constitutional essentiality stands out as a means of guaranteeing the virtues necessary for the progress of a given society.

The cataloguing of rights in the Constitution and its normative force takes the country only part of the way (stability[52]). The rest of the journey requires the effective participation of different actors with their interpretations, concerns, demands, stimuli, and contributions (variability). In any case, stabilizing the present is already a first step -of a long and arduous path- towards the contingencies of the future.

[52] The stability achieved by the Constitution is not of a static type, but of dynamic equilibrium (given the vital need, for society, of variability).

The constitutional scenario, as a whole, forms a very rich field of political observation. It is not only tools of social control that resonate, but elements of social progress (stability ***versus*** variability). It is a juridical-political guide for the foundation or refoundation of the State, vitalized by a normative energy ingeniously produced and subject to constant social updating. What would become of a constitution without strong social reserves and without a firm conviction in its supremacy, where it would renew its normative force? From a strictly logical-rational point of view, constitutional normative force is not an intrinsic quality, but multi-related to external mechanisms of obligatory action.

The normative force of a constitution is a persistently indefinable idea -and endowed with a certain degree of abstraction- if we do not resort to three postulates: 1) mechanisms of observance of constitutional supremacy (institutional arrangements); 2) postulate of actualization (or specular theory); and 3) collective conviction in the constitutional imperative. This is because these variables are what structure the constitutional normative force and allow the Constitution to achieve its vital objectives of stability and variability. Without their integration, in a world where chance and unpredictability reign, the fundamental law would not be the rock on which security, certainty, and regularity are built.

The main bridge -and obviously not the only one- between the normative force of the Constitution and its postulate of actualization are the courts (making, in parallel, of the constitutional order, a judicially sustained order[53]). The courts are, therefore, the main balance of the whole constitutional system. Permanent judicial interpretation, reinterpretation, and revision - in communion with other actors (open theory of the legal order) - capitalizes on the potential for updating the suprema lex, playing an active role in the evolution of the constitutional and political system.

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[53] Jeremy Bentham (1991) says that "a constitution becomes stable when a power is established to protect it" (p. 104). As for Woodrow Wilson (1963), "the whole efficacy and reality of constitutional government lies in its courts" (p. 15) and that "the American courts form the balance of the whole constitutional system of the country..." (p. 109).

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