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Henri Lefebvre's philosophical postulates on the properties of ideological phenomena: Towards a critical theory on the role of ideology in the formulation of judicial decisions

Los postulados filosóficos de Henri Lefebvre acerca de las propiedades del fenómeno ideológico: Hacia una teoría crítica en torno al papel de la ideología en la formulación de decisiones judiciales

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ABSTRACT: This research formulates an analytical-diachronic vision of the evolution of the intellectual treatment that the ideological phenomenon has received by philosophy, from which it is evident that legal theories about the interaction between ideology and law have been built on the application of macro-philosophical systems to concrete legal problems, because of which these proposals are insufficient or are directly contradictory to the study of law as an autonomous object. The intellectual obstacles can be overcome based on Henri Lefebvre's philosophical postulates, which make it possible to articulate a novel critical material theory applicable to the study of the state and legal institutions, which in turn makes it possible to develop mechanisms for identifying the incorporation of ideological burdens in judicial sentences.

KEYWORDS: Philosophy, Marxism, ideology, political philosophy, law.

RESUMEN: El presente artículo formula una visión analítico-diacrónica de la evolución del tratamiento intelectual que el fenómeno ideológico ha recibido por parte de la filosofía, a partir de ello se evidencia que las teorías jurídicas acerca de la interacción entre ideología y derecho se han construido sobre la aplicación de sistemas macro filosóficos a problemas jurídicos concretos, a causa de ello dichas propuestas resultan insuficientes o son directamente contradictorias con el estudio del Derecho como objeto autónomo. Los obstáculos intelectuales antes mencionados pueden superarse con base en los postulados filosóficos de Henri Lefebvre, mismos que permiten articular una novedosa teoría material crítica, aplicable al estudio del Estado y de las instituciones jurídicas, lo que su vez posibilita el desarrollo de mecanismos de identificación de la incorporación de cargas ideológicas en las sentencias judiciales.

PALABRAS CLAVE: Filosofía, marxismo, ideología, filosofía política, derecho.

JEL CODE: E5, E6.

INTRODUCTION

Throughout the history of thought, various hypotheses have been put forward about the nature of the ideological phenomenon, its implications in social processes, and the role it plays in the life of political institutions. Despite the great interest and the enormous amount of bibliographical work, there is no consensus on the subject, nor has it been possible to elaborate a coherent theory that applies to the autonomous study of law. Concerning the current state of the matter, it is worth considering, as Muñoz (2019) states, that the absence of satisfactory ways of resolving the interaction between

ideology and law is due to a confluence of factors, including the existence of a naïve consensus among legal philosophers about the irrelevance of the problem, the sectarian application of certain epistemological models that are not compatible with the scientific study of law, and the absence of critical genealogical explorations of existing theories.

It is precisely for this reason that, as Soto (2019) proposes, any intellectual work that seeks to provide contributions to ideology must start with a thorough review of the different proposals that have been presented throughout the ages, since the concept of ideology is directly imbricated in the material construction of humanity and in the complex and convoluted revolutions that have taken place within intellectuals.

In this line of thought, to draw a clearer idea of the problem, I will approach in greater depth the thought of the authors who have made contributions on the subject, for this purpose I will carry out an initial evaluation of the evolution of the treatment of ideology by philosophy, subsequently, I will undertake an examination in the same sense taking as a basis the theories elaborated within the legal sphere, from this I will outline a critical theoretical model applicable to the analysis of Law that will allow me to answer the questions that will unfold throughout the study.

1. GENEALOGY OF PHILOSOPHICAL THEORIES OF IDEOLOGY

The relationship between theory and praxis has received a great deal of attention from philosophers throughout history, yet there is no agreement on the subject, and each school of thought has established its analysis. Although the term ideology has its origins in Greek reflections, it emerges as a real problem in the wake of several mutations in Western

philosophical theory - especially in terms of ethics - which reach their peak in French modernity.

The epistemological variations began in the Middle Ages when there was a profound transformation of the theoretical configuration of Greek philosophy and therefore of natural law so that the Platonic idea - characterised by the division between the sensible and suprasensible world - went through a process of internalisation that consisted of abandoning the mimesis of ideas immanent to things, emphasizing the role of ideas present in the mind (fantasies in the broad sense). In this context, due to the notions promulgated by the encyclopaedists and the political phenomena before the French Revolution, a process of secularisation took place, the purpose of which was to balance moral demands and personal freedom, to guarantee the pre-established moral harmony influenced by Christianity and, on the other hand, to achieve the restoration of the social order lost by the humanist renovations.

Legally, such an evolution led to the creation of civil rights, confronted with a natural law imposed by reason and materialised in a liberal political order, this renewed natural law ultimately led to the pre-capitalist subjectivisation of legal reality, to skepticism about the possibility of determining normative contents, to the abandonment of such determination to the demands of ideology. (Gil, 1968). Furthermore, with the development of the "goddess of reason," it was argued that the world of ideas, as well as the plane of praxis, were cognizable and differentiable.

Later, at the very beginning of modernity, Descartes drew the intellectual line along which thought began to be conceived as that of which we can be aware without an intermediary person. Later, it was Spinoza who produced a complete split between idea and reality, and shortly afterward Leibniz elevated the dimension of the two realities, which he called

the Kingdom of Nature and the Kingdom of the Spirit. An even more remarkable change is present in Pufendorf's postulates, in which the intelligible world is beyond mathematical concerns, thus drawing a clear and insurmountable distinction between science and philosophy, thanks to which the positive disciplines managed to specify their object of study, while philosophy - in a solipsistic turn - lost contact with material praxis. Moreover, it is worth noting that the philosophy of modernity superimposes the world of the spirit on the world of nature, which is reduced to a secondary material phenomenon. This is how the French ideologists prepared the ground for the construction of German idealism, whose theories would give way to Marx's critique of ideologies, for whom philosophy tried to imagine something, without really imagining something real. Marx thus points to the first meaning of ideology by assigning it a negative value, concluding that the ideological is the image as opposed to the real (Ricoeur, 1999).

As the years went by and at the height of Italian fascism, Antonio Gramsci became the first profound reviser of Marxist theory, introducing a series of new components concerning the study of the processes of hegemony and domination, in which the role of culture and ideology is emphasized, no longer in a negative sense but in the sense of configuring social material reality. It is possible to consider this view as a neutral approach to ideology, which has a descriptive-sociological function.

Despite the negative meaning Marx gave to ideology, it is worth noting that the theoretical debate carried out by the Marxist currents of the 20th century - especially the Frankfurt School - allowed for a broader understanding of this concept, which began to be formulated in a positive sense as well. These postulates reach their culmination in the works of Louis Althusser, who is a critical review of the historicism manifested by Marx argued that ideology is not only a mechanism of alienation of subjects, but on the contrary, ideology is inherent

to every individual, so he would affirm that it is impossible to develop a concrete practice without the mediation of an ideology, consequently, man becomes the ideological animal par excellence. (Estenssoro, 2014).

Althusser would also argue that ideology is not generated through processes of direct interaction with the material world, but that it is a product of the representations that people formulate about that world, the split between material praxis and representation of the subject would open the way for the later development of structuralism and postmodernism through philosophers such as Foucault, Lacan, and Ricoeur imbued with the symbolic, linguistic and identity construction of the ideological.

1.1. A brief critique of theoretical constructs about ideology

The ideology as a phenomenon with concrete practical implications, although it had merited a certain theoretical development since Western antiquity, became a real philosophical problem at the beginning of French modernity and the development of ideal subjectivism, which laid the foundations for the recognition of rights inherent to the person (mainly civil rights before the social contract); the material processes that took place in 16th-century French society would lead to the secularisation of morality and would sharply establish the distinction between idea and matter, separating the former from the latter, which would be handed over to the scientific field as a secondary object of study. The term ideology was coined belatedly by Destutt de Tracy in 1796, who, based on the ideas of his time, aimed to articulate a theory about the genesis of ideas or the science of ideas, the purpose of this discipline being the knowledge of man based solely on the analysis of his faculties. The analysts who followed Destutt - inspired by the Enlightenment and the philosophy of Descartes - had similar intellectual pretensions and were called ideologists.

Soon after, the recent definition and its main defenders were disqualified by Napoleon Bonaparte; however, Napoleon's proposals moved in the political field and lacked rigour on the theoretical level. Then, it would be Marx who would base his critical position on a transposition of Hegelian idealism - which condensed the subjective construction of modernity - proposing a system in which the advance of history obeyed material causes, which is why for Marx from the point of view of ideology "Law, like religion, lacks its history, its history refers rather to that of a set of industrial, commercial and property relations between men" (Sotomayor, 2019, p. 206).

Further on, Gramsci in his revision of Marx's ideas establishes two functions of the power of the ruling class (bourgeoisie): coercion (domination) and consensus (hegemony). According to the author, domination would be affected through the state platform, while hegemony would be developed mainly through cultural apparatuses. The relations between these two dimensions were modified throughout the Italian author's works. And, in the initial stage, he establishes the preponderance of civil society over the state platform. This theoretical development is remarkably close to German social democracy since Gramsci's followers argue that the Western state is not a repressive *factum brutum*, but that the masses can establish models of representation and elect the government of their choice based on spheres of freedom in which material interaction with reality loses relevance.

Gramsci later became aware of his contradiction with Marxism and modified his original theses. Thus, in a second moment, he stopped superimposing civil society on the state, so that in his new scheme, under the definition of civil society, he lumps together a very broad institutional spectrum that includes private apparatuses such as the Church, trade unions, and educational institutions, on which he focused his attention

and which he worked on with greater academic rigour despite the fragmentary nature of his work. Despite the conceptual richness of Gramsci's work, I argue that his approach is flawed in that it omits the relevance of the state itself and the processes of the material construction of history, unjustifiably attributing characteristics of absolute freedom (in the sense of political rights) to society, such spheres of freedom according to the Italian theorist's postulates seem not to be mediated by interaction with the means of production, thus leaving aside the concept of alienation, central to Marx's work.

Thus, to clarify concepts, Gramsci ends up on several occasions confusing or deforming them even further, so that when he speaks of coercion, he locates it both in the state apparatus and in society, when this function is exclusive to the former, at least in the sense that Weber, Marx, and Engels attributed to the state. Gramsci in his later works takes up previous ideas and directly eliminates the boundaries separating the state structure from society so that the state phagocytizes the means of coercion and hegemony, and the distinction between civil society and the state as differentiated assumptions acting at different levels vanishes. The state thus becomes a gaseous entity without established borders, which makes it frankly impossible to establish its nature and characteristics concerning its social functions. In short, Gramsci's theoretical development, while placing under analysis some interesting elements that Marxist theory had not considered, is incapable of offering clear answers about the material construction of history, precisely because of which the functions of the various institutional platforms disappear, culture seems to replace the material economic structure and the possible social reforms are reduced to the superstructural dimension. Thus, in Gramsci's view the defined institutions, the state, and praxis are dead.

Later the French-Algerian philosopher Louis Althusser developed Gramsci's postulates to their ultimate consequences. The result was the thesis that religions, political party systems, workers' unions of great relevance at the time, families, educational institutions, the media, and cultural emporiums were indeed the ideological apparatuses of the state. In explaining this notion Althusser (1970) states:

> It is irrelevant whether the institutions in which ideologies are realised are public or private because they all indifferently form parts of a single dominating state, which is the precondition for any distinction between public and private. (p. 158)

Attempts to eliminate the specific delimitation of the state are based on the work of Benedetto Croce. He argued that the real state - understood as the motor of the processes of historical progression - can sometimes be found not on the legally defined plane, but in many cases in the private sphere, and sometimes in revolutions. Thus, Croce notably confuses the state with the motor of history, thus on the one hand reducing the state institutional component to the prevailing social force at a given moment, and on the other hand constructing a descriptive-positive theory that does not intervene in the historical evolution, denying any viability to material praxis, such reductions to a greater or lesser extent will be present over time and will find a profound renewal in postmodernism and structuralism through its exaltation of culture and difference.

Benedetto Croce's postulates are illuminating concerning the constructs that have been drawn in the history of ideologies, especially about the passive role played by theories that blur the concrete functions of institutions (mainly the state) either by relegating the manifestations of power to the mere cultural field or by establishing structures that interact at levels far removed from social reality, which through elaborate

solipsisms become impassable. Thus, when the state is not specifically determined, or in other words, the mechanisms of hegemony and domination are diffused in a multiplicity of spheres with vague characterisations (in the case of Gramsci) or fragmented in structures connatural to the existence of ideological animals (in the case of Althusser), objective praxis as a specific task and action-oriented to a determined end loses meaning. Based on these assumptions, any theory that claims to be critical, at the risk of becoming stagnant like all descriptive-positive theories, must establish clear formulations about the properties of the institutions in force at a given moment.

To conclude the critique of Gramsci, it is worth mentioning that many of his formulations are opaque and even contradict the Marxist substratum they are supposed to defend. Thus, the Italian sometimes argues that consent is to be found in the sphere of civil society, which is thus superimposed on the state, and on this basis, it can be concluded that the power of the bourgeoisie results above all from consensual processes in which cultural domination plays a fundamental role. The formulations about the cultural battle are erroneous, firstly because non-hegemonic classes cannot be culturally dominant, since culture reproduces the processes of interaction with the means of production so that if capitalist forms of production are maintained, the prevailing cultural manifestations will only exalt these processes so that changes in the superstructure alone do not have the power to produce profound structural changes.

It seems that Gramsci, in attempting to introduce renewed elements of analysis - very rich indeed insofar as they opened up fields of study that had not been addressed in their real dimensions until then - about the exchanges between the structure of economic production and the superstructure (possibly to save the economic determinism for which Marx is constantly accused), He ended up by relegating the plane of

interaction with the means of production, thus by considering this concept as mere economism he forgot the conceptual importance of alienation, which plays a central role in Marx's work, thus constructing a theory which starts building the house from the roof and which is opposed to any objective practical action.

Concerning structuralist and postmodern thought (Althusser Lacan, Foucault, Ricoeur) it is worth noting critically that these types of philosophical doctrines - in a late resurgence of the inaction schemes of positivism - through their approach to games and interactions between syntagms and symbols (depending of course on the author in question) have outlined postulates that show little more than resignation and even the apology of what in our time can be defined as 'weak thought', expressed - among other things - by the abandonment of the critical notion of ideology and its replacement by the analysis of culture, more precisely multiculturalism and diversity (Grüner, 2003). In this way, a kind of fetishism is generated which, in the last instance, extols the cult of symbolic and identity-building processes, which cover up the disparity in the ownership of the means of production through the legitimisation of multicultural societies of exchange.

2. IDEOLOGY AND LAW: BETWEEN PURE LEGAL THEORY AND POSTMODERNISM

The treatment that ideology has received in the philosophical field, far from being uniform, has merited multiple and dissimilar formulations that obey deeper philosophical assumptions (for example, the difference between idea and matter, the argumentation in favour of the determination of idealist or materialist philosophical doctrines, the consideration of the state and institutions, etc.) that have considerable implications in political, ethical and, of course, legal theory. Then, legal theoretical models have generally lacked intellectual

autonomy and have been part of processes of applying broader philosophical postulates to particular areas such as the theory of justice, the structure of norms, the role of the state, and other problems, It is precisely for this reason that most of the theoretical elaborations of legal philosophers throughout history have lacked systematicity, coherence or have directly contradicted the practical aspects of the assumptions they have expressed, in some cases even endangering the consideration of law as an autonomous object of study.

The process of applying macro philosophical theories to the legal field becomes evident in the consideration of the functions of ideology concerning Law. In this line of thought, I propose a diachronic review, by no means exhaustive, of the main visions that have been elaborated around the links between the ideological phenomenon and Law, for which I highlight the postulates that have had the greatest relevance in the establishment of paradigms in the development of legal philosophy and the construction of theoretical models about the delimitation of legal reality, namely: a) the subjectivist iusnaturalism of French modernity (already analysed in previous paragraphs), b) the scientific positivism of Hans Kelsen, c) the analytical positivism of Herbert Hart, d) some theories formulated after Kelsen's positivism came into force, in which the importance of democracy and the moral revitalisation of justice is highlighted, such as Dworkin's proposal, and e) the application of post-modern doctrines to the legal field through cultural theory in which discourse plays a vital role.

Regarding iusnaturalism, it is worth emphasising what was said above about the importance that the development of ideal subjectivism (absolute separation between matter and reality) played in the consolidation of normative systems and theories of justice that affirmed the existence of rights connatural to individuals (especially property rights), which

were considered before the formation of society and the elaboration of the social contract. These types of proposals, by elaborating illusory conceptions of the real, are completely erroneous since they move away from the study of social objectivity, and therefore end up legitimising a certain situation which, in the case of secular iusnaturalism, was the rise of the enlightened bourgeoisie that would become the driving force of history from that moment onwards.

As an initial approach to legal positivism, I will refer to some aspects of Kelsen's theory to thread together some nuances about the role of ideology in the work of the Austrian legal philosopher. To this end, it is necessary to refer to Kelsen's conceptualisation of ideology, according to which, for the Austrian jurist, there are three meanings of ideology, viz: a) ideology as opposed to reality (Marxist conception), according to Kelsen, for Marx, Law is an ideological conatus which conceals a certain state of affairs or an economic interest (on this point the Austrian thinker confuses interest with material interaction of social agents, possibly due to superficial readings of Marx's work), on this point Kelsen without further justification affirms that the normative is not opposed to reality, since such a position would establish an erroneous theory of law; b) ideology understood as social space not mediated by natural causal laws, according to Kelsen law is the authentic meaning of ideology, since the normative order cannot be reduced to the natural world. However, it is worth saying that the synonymy between ideology and social system is superfluous, so on this point it is possible to see Kelsen's serious reductionism, possibly influenced by his scientistic intentions and some erroneous readings of reality inherited from radical positivism; c) ideology as disfigurement, which is present in the formulations of law in Kelsen's time; this type of theoretical constructions perform a non-descriptive, justifying function, which deforms the object of law, This transfiguration occurs when the appeal is made

to supposed natural stages (existence of law inherent before an existing order) or to metaphysical transcendental aspects (iusnaturalism), i.e. ideology understood as the meddling of meta-descriptive elements in the construction of a pure theory of law, which is precisely the ideological form that Kelsen combats throughout his work.

Although it is to Kelsen that we owe the recognition of law as an autonomous object of study that can be cognitively identified based on differentiated characteristics, it should be pointed out that this thinker makes a notable error when he uncritically transposes the characteristics of the objects of study of the positive sciences (phenomena that occur necessarily and are subject to the laws of causality) to the object of study of law, Although it has defined institutional and linguistic properties, it also participates in and originates from the processes that take place in society, which is why it cannot be reduced to simple natural laws.

In short, for the Austrian intellectual, ideology intervenes when contaminating elements, whether political, religious, or sectarian, are introduced into the treatment of the object of study of law, which Kelsen identifies with norms. In this way, we can consider that ideology impurifies the methodological process of constructing the science of law but does not have authentically social functions concerning the genesis of law as a by-product of the political life of the state; this position, as indicated above, does not respond to the nature of the material production of human history and is therefore insufficient.

Having dealt at length with Kelsen's work, it is necessary to refer to the postulates of Herbert Hart, who undertook the task of renewing the positivism initiated by Kelsen. About the intellectual pillars of Hart's legal theory, it is possible to see the great influence of the analytical philosophy of language,

especially Austin and Wittgenstein. Analytical philosophers maintain that only the propositions of science that are based on the verification of real objects, as well as the propositions of syntax without regard to their meaning, have empirical value. Given the epistemological structure, Hart assumes that the problems that legal philosophy deals with are the same as those that have been discussed in the field of cognitivism. Through this process that renews English empiricism, philosophy is reduced to the syntax of science. A fundamental characteristic of analytic philosophy has been the thesis that language is the cornerstone of all objectivity, furthermore the study of language replaces the study of man, who is lost in the interweaving of syntagma.

Although Hart does not elaborate on a concept of ideology, it is possible to infer it from the work of analytical philosophy, for this it must be considered that for Hart language is the starting point on which legal reality is constructed, and it must also be considered that for the analytical schools there are no philosophical truths in strict rigour. Moreover, the ideological would consist of a certain articulation of a determined thought, which is a strict sense is neither false nor true and which can only be analysed logically, it is for this reason that ideology (as a principle of violation of given logical assumptions) would arise in cases in which the language is permeated by violating logical principles of legal construction. In this regard, it is worth pointing out as a criticism that although the Law as a structured set of language (metalanguage of regulation) participates in the logical rules of language, it is not a natural or necessary phenomenon on which only the phenomenal logical description fits, but on the contrary, it is a historical manifestation of a state of things at a given moment in time.

It is also worth referring to the theory of Ronald Dworkin who, in his arduous criticism of legal positivism - based

mainly on the role of principles and their difference concerning norms - specified his thesis on the application of principles in difficult cases, according to which the virtuality (application in the strong sense) of principles is only manifested when in a defined process it is not possible to subsume a legal norm to a factual situation, i.e. only in cases in which there are normative gaps, Dworkin did not develop his theory more extensively on this point, so it is possible to argue that in cases where the rules were clear, they could be applied without resorting to another type of mechanism, which is extremely difficult since "the configuration of fundamental rights varies not only in doctrine but also in legislation" (Rojas, 2019, p. 93). 93). In this way, it is possible to consider that the application of the principles according to Dworkin is ideological since it is based on a conception that does not delimit the law, and therefore unjustifiably introduces in a hidden way the logical need for the referral to supra-legal moral principles, a theoretical resource that in essence is nothing more than the defence of the liberal model through the law.

Therefore, although Dworkin is not an iusnaturalist academic in the strict sense, he introduces ideological elements in his formulations, which in turn allow us to see what his conception of ideology is. Moreover, as in the case of Hart, there is no concept of ideology pointed out by Dworkin himself. Nevertheless, with what has been analysed up to this point, it is valid to maintain that for Dworkin the role of ideologies would be found on an infra-legal plane, or in other words, the very foundation of law would be found in the ideological exchange that is manifested in the democratic game defended to the hilt by the author. In this order of thought, ideology would not invade the field of law unless there were applications of norms contrary to its meaning, or the incorrect application or lack of application of supra-legal principles in cases of gaps in the law, which would not be legitimate for Dworkin as it would violate

the very essence of liberalism based on the free anthropological construction of moral values based on the principles of freedom and property protected by legal justice.

To conclude this diachronic journey, I will refer to the theories that attribute a cultural value to law. These doctrinal models emerged from the work of authors such as Peter Goodrich, Douzinas, Pierre Schlag, and Drucilla Cornell, who applied the postulates of postmodernism (Lacan, Foucault, Althusser, Ricoeur) to the legal field intending to combat the ideas promulgated in the Enlightenment and put an end to philosophical ideas that emerged in modernity, such as truth, totality, progress, freedom, and justice. For a better understanding of what has been discussed up to this point, it is necessary to refer to cultural theory, which can be conceptualised as an interdisciplinary study that is mainly characterised by the lack of clear delimitations about the various objects and methods of analysis of these.

Despite the existing dispersion, it is possible to assign some persistent particularities among the various authors:

> a) Great interest in the processes of construction of meaning and the mechanisms through which these meanings become discourses, furthermore, cultural theorists have elaborated an artificial analogy between culture (multiculturalism) and language, from which they maintain that at all levels there are systems of the interaction of signs (for example in the urban design of a city according to its ordinances, in the different types of clothing of the jurisdictional authorities, etc.), these systems of the interaction of conduct and expression draw the models of daily life and the codification of social exchanges through the Law. Also, the cultural theorists have elaborated a contrived analogy between culture (multiculturalism) and language.), these

systems of the interaction of behaviour and expression shape the patterns of everyday life and the codification of social exchanges through law.

b) legal postmodernism maintains that discourses - in the style proposed by Foucault - are generated in certain social sectors and through them, meanings are generated, moreover these expressions do not play a solely communicative role in the traditional sense, but on the contrary, being active manifestations of power, they elaborate the reality we inhabit, in short, culture becomes a producer of multicultural reality, the real in this order of ideas becomes a by-product of the multiplicity of discourses that make up culture, Thus, the construction of reality would be based on the marginalisation of certain meanings, on the other hand, the possibility of objective evaluation of these discourses is suppressed, since for the authors of cultural theory no parameter allows the accuracy or morality of a discourse to be verified, as a result of which the classical categorical standards vanish and the cultural modeling of reality reaches levels never before thought of;

c) cultural theory as a good heir of postmodernism is a multidisciplinary study that is built on various subjects such as philosophy, art, literature, psychoanalysis, semiotics, and sociology, so that in the legal field it would mean the construction of a hyper-fragmentary legal theory that would study the mechanisms of construction of meanings that underlie judicial elaboration in a broad sense, seeking the establishment of processes of cultural openness of the legal phenomenon.

Concerning the positions analysed in this section, it is possible to establish by way of synthesis that the various legal positions on the interaction between ideology and law have been constructed based on broader intellectual structures which, in their application to the legal field - are understood as a historical material phenomenon, but which at the same time retains differentiated characteristics - are insufficient or manifestly contradictory to the construction of a congruent philosophical scheme. Furthermore, the intellectual turn carried out by the thinkers of French modernity allowed the development of ideal subjectivism, which in turn manifested itself in the introduction of bourgeois ideological forms in the study of law, such as the development of civil rights supported by secular iusnaturalism.

Years later in the legal field, it was Kelsen who made the greatest contribution to the establishment of mechanisms for identifying an autonomous object of law separate from ideology, but despite this, by sustaining his intentions in the postulates of the Vienna Circle, he ended up reducing the study of law to laws of a descriptive nature manifestly contrary to the social character of law, Hart's attempts in the field of logic would have similar consequences, while the theories that resort to the existence of supra-legal norms (with greater or lesser pre-eminence over positive norms) as in Dworkin's work reflect the ideological establishment of a state of affairs, which in the case of the American professor is liberal democracy in which ideology plays the role of sustaining political debate.

Finally, the application of post-modernism, especially the theories of discourse and multiculturalism, has been widely accepted in recent years and, although they take up elements forgotten by positivism, they produce a hyper-fragmentation of the legal phenomenon and of the institutions, which is why they engage in eternal solipsism alien to any material social process.

As in the philosophical field, various theories have been developed in the field of law about the functions of the ideological phenomenon. In this process, ideological positivism played an important role in establishing that law could be studied independently, although this contribution was sustained on ideological bases (classical liberalism) which have subsequently been transformed to advocate the reconsideration of the identification between law and morality, as in the case of Dworkin, These tendencies have been opposed equivocally by post-modern studies that end up nullifying the possibilities of the critical analysis of Law understood as a delimited phenomenon. In the face of the insufficiency of the postulates outlined so far, Henri Lefebvre's considerations offer answers to the problems posed.

3. HENRI LEFEBVRE'S CRITICAL THEORY: TOWARDS THE RECOVERY OF THE DELIMITED NATURE OF THE IDEOLOGICAL PHENOMENON AND THE DEFINED CHARACTER OF LEGAL INSTITUTIONS.

Lefebvre outlines his conceptualisation of the ideology, starting from a dialectical attack on the ideal schemes previously proposed by philosophy. Thus, for Lefebvre, ideology is the false consciousness that opposes dialectical thought (Lefebvre, 1976), since dialectics is the mechanism that allows access to the real being of thought. Even though the postulates referred to above have strong parallels with Marx's formulations, it should be clarified that for Lefebvre, although ideologies establish a series of deformed and deforming representations that tend to become institutionalised (Lefebvre, 1968), they also maintain a relationship with praxis, since they are a mode of manifestation of the real.

It must therefore be emphasised that for Lefebvre, as for Marx, the capitalist mode of production "makes consciousness confront its internal dialectic because the doubly free workers

are presented with their social being, as something alien that dominates them and in which they at the same time affirm themselves as free" (Steimberg, 2021, p. 103). It is precisely in the interstice between idea and matter that the work of the critical intellectual makes its way, seeking to destroy all formalisations of the real that is generated by the processes of institutionalisation and petrification of material life.

The theoretical scheme that Henri Lefebvre proposes aims to de-formalize those processes or contents that are the product of alienation. In the proposed critical theory, the sociological aspect makes it possible to apprehend the forms through the study of institutions, while the analysis of history facilitates access to the processes which, being charged with content, lead to the genesis or elimination of social forms, which, despite undergoing constant change, are perfectly differentiable, unlike in Gramsci's theory.

It is worth mentioning that ideological processes likewise allow old forms to acquire new content (for example, when old legal institutions such as marriage mutate their characteristics due to changes in the dialectical-historical structure). Thus, Lefebvre's theory materially studies the past, intending to understand the present and from there construct the future through praxis. Although the French intellectual worked because of sociology, philosophy played a fundamental role in the development of his theoretical constructs, since sociology could only become a critical discipline if it was inscribed in broader philosophical assumptions (Trebitsch, 2004).

By bringing together history, philosophy, and sociology in a critical theory, Lefebvre achieves a remarkable understanding of social phenomena, which are built on the infinitude of the human spectrum, thus Lefebvre's postulates seek the construction of a distant order, in which the one-dimensional man (Marcuse) is abandoned for the construction

of the total man. Then, we can consider that the postulates of the French sociologists' distance themselves from Marxist philosophy about economic determinism, despite this, the material role of social praxis is rescued, especially concerning the social production of the spaces that we inhabit and that shape the institutions (Cápona, 2019).

From what has been said above, it is possible to consider that Henri Lefebvre pierces the solipsistic locks of a postmodern hyper-phenomenology, imbued with the treatment of the empirical, which makes impossible any dialectical negativity that opens the way to critical praxis. The theory developed by the French thinker makes it possible to bridge the split between the *res cogitans* and the *res extensas* produced in enlightened modernity as outlined in previous paragraphs, in the same way, it makes it possible to break with any kind of economic determinism that could be found in Marx's theory and applied to the field of Law it allows for the understanding of the functions that institutions fulfill in the material order, making it possible for having a greater understanding of the interaction of ideology (as means that reflect the true) with the institutions given in a specific historical moment.

Lefebvre's theoretical construction advocates the rethinking of being understood as unity, which is why a critical social theory in the sense pointed out by this author is categorically opposed to the end of history and of the human-material construction of historicity that is present in the affirmations of neoliberal and postmodern intellectuals (Alexandre Kojève, Raymond Abellio, Francis Fukuyama), Raymond Abellio, Francis Fukuyama), in this line of thought it would be possible to affirm that History will last as long as there is praxis, and praxis will exist as long as the human phenomenon persists. The approaches outlined so far can be summarised as the recovery of the concrete material, of institutions with

differentiated functions (despite the recognition of the complexity of their interaction even on levels that go beyond mere factuality, such as culture), of the state as the material product of a certain order of things and therefore of Law as a political-legal entity that can be understood autonomously, all within the framework of a humanism that advocates the return of the total man.

Lefebvre's philosophy represents a brilliant intellectual attack against post-modern idealism and its henchmen (neo-colonial analyses, the multiculturalism of the English anthropologists, post-modern neo-liberalism, etc.), and idealism which in its various forms seeks to destroy in a single manoeuvre the authentic freedom of man and the role of his praxis.), an idealism which in its various forms seeks to destroy in a single manoeuvre the authentic freedom of man and the role of his praxis; it is thus that when everything is converted into a consumable form, the ideological as a mode of representation of a stage of material conditions become authentic, in this way the state is blurred and the juridical phenomenon becomes one discourse of power among many others.

In short, Lefebvre's theses overcome some excessively static aspects of orthodox Marxist theory, integrating various components of social material interaction that do not only refer to the economic field. In parallel, based on the assumptions made by the French philosopher, a theory can be constructed concerning the identification of the mechanisms of manifestation of ideology based on the determination of defined properties of the state and the law.

4. INTERVENTION OF IDEOLOGY IN THE FORMULATION OF JUDICIAL DECISIONS. TOOLS AND MECHANISMS OF CONTAINMENT WITHIN THE NORMATIVE ORDERS.

To begin with, I would like to stress the importance of the material paradigm concerning the understanding of the profound interweaving of relations between the political, economic-material, and legal systems. The vitality of this theory is evident precisely because it makes it possible to examine legal operators in terms of their place in the general fabric of the social organisation, which is precisely the advantage of this approach over opposing views such as the linguistic study and the study centred on the role of judges as autonomous entities (Raz, 2001). In this respect, based on the theoretical development elaborated so far, I outline an outline of the mechanisms of intervention of ideology in the different processes of judicial decision-making.

It is worth mentioning that he did not make a distinction between social and cognitive functions of ideology, for in this study I argue that law is a material-institutional product of the state, which in turn derives from a certain situation.

Furthermore, the ideology is gestated in the social substratum as a deformed and distorting representation that tends to become institutionalised, because of which the cognitive functions of ideology become manifest precisely in the legitimisation of a certain institutional form that in turn legitimises a certain way of interacting with the world.

This is why, according to my analysis, ideology does not manifest itself as a configurative mode of reality (Gramsci, Althusser), nor does it interact with the democratic substratum that legitimises law (Dworkin), but rather it is a certain deformed representation of social objectivity that tends to institutionalise itself by justifying a certain mode of human

interaction produced in the social material base. The ideology would allow the structuring of certain models of justice that are received in a system of positive law, From this, it is possible to consider that the legal phenomenon as a way of presenting the real, despite not coinciding in a strict sense with historical material objectivity, also possesses defined and identifiable forms, so that as a logical-discursive institutional practice it can also be deformed through the various mechanisms of interaction of legal operators with legal reality.

In this line of thought, judges play a fundamental role, since it is precisely through their jurisdictional activity that the material component of the law is made present, which is precisely why I will focus my analysis on the relations and mechanisms of manifestation of ideological thought in the different processes of articulation of judicial sentences.

Based on the above, the ideology of judges can show itself in the various phases of the elaboration of a judgment[1] , even though the axiomatic assumption of decisional impartiality forces the judge to conceal possible ideological manifestations present in a judgment, which is why tools and mechanisms are required to identify them. Then, it is possible to state that a judgment can be based on theoretical elements that contradict the general properties of a normative system, either by introducing ideological charges in the discourse of logical-rational motivation of a judgment, or directly in the application of rules or principles; due to their importance, it is necessary to analyse both circumstances separately.

1 Concerning this, a procedural distinction is proposed regarding the different phases through which a judgment is articulated. The first corresponds to the judge's argumentative discourse, which occurs both initially in the first logical-linguistic approach that a judge has to a case, and at the end of the case intending to justify his decision; on the other hand, the second moment refers to the logical-applicative process of rules or principles which refers to the subsumption of the facts to specific rules and principles.

4.1. Introduction of ideological elements into the judge's argumentative discourse

The judicial argumentative process is of fundamental importance in the elaboration of judicial decisions since it is prior (logical-linguistic process) and at the same time subsequent (discourse of resolution) to the logical-applicative process of norms or principles, since in the first moment it intervenes in the logical-epistemological structuring of the theory of a case, This, in turn, makes it possible in a second moment to apply norms or principles belonging to the legal system, to finally be present in the articulation and justification of the elements that form part of a decision, as well as in the formulation and use of theoretical-doctrinal elements.

The logical-linguistic processes, as they occur in the intellectual sphere of the judge, are not clear in the judgment and can only be studied once they have manifested themselves in the logical-applicative process. The first would be the simple justification of the logical-applicative process using rhetorical arguments, while the second would consist of superimposing doctrinal elaborations on the logical-argumentative process. In this hypothesis, the legal system would simply cease to be unjustifiably considered as a means and source of resolving a case, and theoretical arguments would be used as a direct source of the decision, using the rules or principles of the normative body only as a mask of legitimisation.

In either of the two hypotheses concerning the genesis stage of judicial rulings, the mechanisms employed for the introduction of ideological charges would be the incorporation of significant evidence contrary to reality and the use of apparently logical implications. The first mechanism refers to the justification of a point of view through evidence that explains what is affirmed, even though the evidence provided does not objectively exist or its logical implications have been

distorted, thus producing legal consequences contrary to the neutral application of the normative framework.

For its part, the use of apparently logical implications can be defined as the data or logical connections that are not expressly established in a judgment, but which are implicit in the dogmatic constructions of the ideology to which the judge adheres, and which are assumed to be true by the decision-maker, for once a certain set of values forms part of the mental model of a subject who professes an ideology, certain assumptions acquire a self-evident character, which can be understood and shared by any member of that ideology, moreover the judicial agent assumes a discourse that can only be fully understood by the members of a group.

4.2. Introduction of ideological elements into the logical-application process of rules or principles belonging to the legal system

In this case, it would be necessary to differentiate between two possible scenarios: the first would occur when ideological elements are manifested in the presence of a rule that forms part of the legal system and which, due to the nature of the factual assumptions, must be applied. The ideological constructs would lead the judge to stop applying it, distort its interpretation or twist the factual assumptions to make them coincide with preconceived ideas.

We would be facing the same scenario if there were no positive rules that could be subsumed to the case but that, due to the nature of the case, the application of principles would allow a resolution following the law in force, in this hypothesis the judge would cease to apply said principles because he considers them insufficient, not applicable or because he has distorted the facts to adapt them to a positive rule that is not applicable.

In this case, the introduction of ideological elements could only be justified if two parameters are met, namely: a) the axiomatic foundations of a normative scheme such as human rights, constitutional values, or the general considerations about justice contained in that system are insufficient to provide an answer, b) the decision issued in turn does not violate other norms, principles or axioms of the legal system. In cases where both parameters are met, the introduction of ideological burdens in a judicial decision would be tolerable if it does not represent a violation of the applicable law.

The resources used by judges to introduce ideological components into their judgments during the logical-application process of norms are presupposition, illustration, and polarisation. Presupposition consists of assuming that the truth of a certain assertion has been established when no such truth has been established at all, but only a value judgment has been expressed. Illustration, on the other hand, can be conceptualised as an exemplification that, despite not being logically related to the specific case, seeks to justify the accuracy of an assertion or argument. Finally, polarisation is a semantic strategy through which unjustified differences are established between legal subjects, favouring the equal over the supposedly different or contrary.

To conclude this section, it seems necessary to clarify that the different mechanisms described in previous paragraphs do not appear uniformly or exclusively in certain phases of the articulation of sentences, since the resources analysed often act as a support for other techniques, or their properties may be shared and act at different logical-argumentative levels.

4.3. Limits to Ideological Manipulation in the Articulation of Judicial Judgements: Perspectives of a Critical Material Theory

So far, sufficient theoretical elements have been pointed out in favour of a material theory of law, according to which legal institutions have differentiated properties that in turn derive from the previous historical emergence of the state in the sense pointed out by Marx and Weber, as opposed to the formulations of Gramsci and contemporary post-modern and structuralist authors. In this way, based on the contributions of Henri Lefebvre, ideology has been conceptualised as a deformed mode of manifestation of the real which tends to be institutionalised concretely, and in this line of thought, even though ideology is opposed to the real, it can also be identified and analysed objectively.

On this basis, it is feasible to affirm that ideological manifestations in the formulation of judicial sentences, far from being connatural to the intellectual activity of judicial agents, are clear as deforming modes of discursive-applicative interaction on the part of legal operators concerning the objectivity of a legal system in force (a set of cognitively identifiable rules and principles). Along these lines, the deforming function of ideologies can be identified more easily in the case of judges, since they operate in the argumentative and applicative processes of the normative order through the creation and justification of a concrete resolution. Thus, the introduction of ideological components in judicial rulings can be cognitively identified by a neutral individual who knows the axiomatic and normative characteristics of a given system, and it is precisely on this basis that it is possible to propose a set of tools for the purification and annulment of such rulings.

It is worth mentioning that the mechanisms announced in this article find their applicative-deontological bases in the

axiomatic and normative presuppositions of an existing legal system, which is why it is not proposed to resort to the use of supra-legal norms. Also, the tools proposed in this work are eminently procedural in nature.

In this line of thought, the main means of controlling ideological sentences must be positivised in the legal system, which would allow for their viability and practical effectiveness. Regarding this problem, I propose two tools of feasible implementation, the first is procedural and institutional, while the second has a practical social character.

In terms of procedural instruments, I would highlight the relevance of the mechanisms for the control of legality and constitutionality by specialised courts. Thus, the deformations that occur in the logical-application process of norms would be corrected through the control of legality that is carried out in the different instances of judicial review, but which acquires greater relevance in the courts of cassation, which play a fundamental role as they have jurisdiction over the resolution of appeals for cassation that tend to re-establish the rule of law.

Although the mechanisms for the control of legality are almost uniformly accepted in legal theory, methodological problems could arise if the remedy of cassation is seen as a mere mechanical exercise of verifying compliance with the law, As a result, it becomes imperative to develop theoretical schemes - whether, by way of jurisprudence or law - which establish standards for the neutral and logical application of infra-constitutional norms, the use of such schemes would become obligatory for judges, and should therefore be integrated into the reasoning of the decision, understood as a fundamental guarantee. At this point, it should be mentioned that the basis of any legality control mechanism is based on rationality, which is a tool that the judicial operator can use in each case, following the rules of logic, thus allowing the control of the validity and

internal motivation of the judicial decision (Ruiz, 2019).

On the other hand, constitutional control would have the objective of consolidating a normative notion of the Constitution -valid on a legal and sociological level- which "can only be achieved when harmony is achieved between the formal Constitution and the material Constitution" (Zaldívar, 2017, p. 252). Although constitutional courts are more active in the generation of jurisprudence, in the absence of treatment of the ideological problem by the academy, it would also be necessary for there to be clear jurisprudential parameters that allow for the evaluation of whether the application of constitutional norms and principles was carried out within the framework established by the legal system.

Finally, the recognition of certain practices of neutrality on the part of judges - in the sense pointed out by Hart - would guarantee the purging of ideologically charged judgments in the very intellectual sphere of judicial agents; such practices of recognition must be constructed both intellectually and through the institutional platform of the state and the political-constitutional organisation of its functions.

CONCLUSIONS

The nature of the ideological phenomenon has received different philosophical formulations throughout history, especially since the beginning of enlightened modernity, which on the theoretical level allowed the consolidation of ideal subjectivism, which established an absolute separation between the world of ideas and the real world. From the formulations of the French ideologists of the 17th century onwards, ideology acquired a negative meaning, mainly formulated by Marx. As time went by, Marxist philosophy was subject to several revisions by intellectuals such as Gramsci and Althusser, who assigned neutral or positive meanings to ideology. Gramsci's revisionist

Marxism as well as structuralism and postmodernism have a descriptive-positive character that cancels out the relevance of social praxis and ends up legitimising ideological schemes in force at a given moment.

In the field of Law, no autonomous theories have been developed about the interaction between ideology and Law, but rather processes of application of broader macro-philosophical theories have been generated, which, not being part of a coherent scheme of thought, are insufficient or directly contradictory to the analysis of Law as an autonomous object of study. The conceptualisations of ideology formulated by *iusnaturalism*, positivism, democratic and cultural theories present inadequate analyses that operate on levels that do not correspond to the objective reality of the legal phenomenon, Given this, these theorisations lead to the extinction of the scientific study of law and its replacement by linguistics, psychoanalysis, culture or semantics applied to the legal field, because these types of formulations do not previously delimit the nature of the ideological phenomenon according to a philosophical scheme that is congruent in its totality.

Theories formulated about the properties of ideology are informed by deeper philosophical considerations and assumptions concerning epistemology, ethics, logic, and linguistics, which in turn have considerable implications for political, ethical, and indeed legal theory.

Henri Lefebvre's philosophical theses possess great epistemological richness since they overcome some excessively static aspects of orthodox Marxist theory by integrating various components of social material interaction, which do not only refer to the economic field. Precisely based on the assumptions pointed out by the French philosopher, it is possible to construct a novel legal theory concerning the identification of the mechanisms of manifestation of ideology, based on the

determination of the historical-material properties of the state and law.

The links between ideology and law can be identified cognitively by a neutral agent and operate both in the institutionalisation of a scheme of justice that tends to be positivised and in the deformation of the axiomatic properties of a legal system in force; these manifestations can be seen more clearly concerning the jurisdictional function of judges, as they are at the institutional apex of law. Furthermore, the incorporation of ideological elements in judgments is present in their logical-argumentative articulation processes and can be evidenced-based on a logical analysis of the components of a normative system. Then, the inclusion of ideological burdens in judicial sentences is considered reprehensible not because it contravenes supra-legal values (iusnaturalism and democratic theories) but insofar as it represents a violation of the axiomatic and normative structure of a legal system in force.

The tools for the purification of ideological judgments must be positivised in the legal system itself to guarantee their effectiveness and practical viability. Based on the theoretical analysis, the most important tools are of a procedural and social nature. Among the mechanisms of a procedural nature, the importance of systems that facilitate the control of legality (appeals for cassation) and constitutionality (control of constitutionality) stands out. In order not to be reduced to mechanical exercises referring to the control of the application of norms, these means must be based on the development - whether by way of jurisprudence or law - of theoretical schemes that establish standards of neutral and logical application of norms, taking as a basis the materialist study of the ideological phenomenon and legal institutions. On the other hand, the recognition of certain judicial practices - in the sense proposed by Hart - referring to decisional neutrality, would guarantee the

purification of judgments with ideological charges in the judges' intellectual sphere; these practices of recognition must be built both within the judicial sphere and through the institutional platform of the state and the constitutional organisation of its functions.

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