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Essay/Short Answers

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Essay/Short Answers

1. Critical Assessment of Gerald Rosenberg (2004)'s Views

Introduction

To understand comprehensively the role of the judiciary in a democratic context, not enough to study the immediate effects of judgments. That's the first step. More complicated phase but also the most rewarding, is to analyze so empirically what are the medium and long-term decisions taking the courts and tribunals. This includes determining if a decision is limited to the case that motivated, or if you have a greater impact on society. Only then one can know with certainty if the courts of a country function as an engine of change, as a major player in the process of expanding rights. Gerald Rosenberg (2004) argues that contrary to popular perception, the U.S. Supreme Court's decision in *Brown* did not influence congressional and presidential action in the area of civil rights. This essay has critically assessed and explained Rosenberg (2004)'s central argument, particularly clarifying how he measures 'influence.

Rosenberg (2004)'s Central Arguments

Gerald Rosenberg (2004), has conducted a study of this kind in *The Hollow Hope: Can Courts Bring about Social Change?* The Rosenberg (2004) aims to investigate what extent and under what conditions the judiciary; particularly the U.S. Supreme Court can cause some social group start enjoying a right that was denied them before. Their cases studies are some of the most important judicial decisions in the United States during the twentieth century. These decisions are usually considered a watershed in such topics as racial integration, rights reproductive rights of women and political representation (Hull, 2013).

Rosenberg (2004)'s findings are conclusive; Supreme Court has very unlikely to bring about social change by itself. According to Rosenberg (2004), trust the courts to act effectively when

the executive and the legislature fail, is to have a hope hollow. The author argues that if there were changes in the subjects studied, produced by other factors and not by the intervention of the Court. The first part of the study analyzes the impact of the Brown case v Board of Education (1954), in which the Court determined that establishing separate schools for blacks and whites was unconstitutional. Usually, organizations that promote civil rights cite the case Brown as one of the most important moments in the struggle for racial integration. They argue that the schools were segregating students as a direct result of the ruling. However, the author shows that this argument is false.

Although, Brown Case leaves no doubts about the constitutionality segregation in the southern states of the United States did not happen virtually nothing. A 10 -year- Brown schools remained equally segregated than before sentencing. Only until Congress passed the Civil Rights Act in 1964, all states began to integrate blacks and whites in the same schools. Therefore, the Judiciary failed to achieve social change; it was only possible to speaking the legislature (Hull, 2013).

According to Rosenberg (2004) the second issue is the legalization of abortion, which he gave thanks to Roe v case Wade (1973). He explains that the promoters legalization have used similar tools to organizations advocating racial integration. Instead of promoting changes through legislation, sought the judiciary will act in favor of reproductive rights of women. Their efforts, at least in the court level, were successful: the Court stated in Roe laws which forbade abortion were unconstitutional because abortion was a decision protected by the right to privacy.

It is necessary to study the social consequences of the decision. If the strategy of the promoters of the legalization of abortion was correct, then after Roe the number of legal abortions should have increased considerably. Evidence shows that it was not. Although more abortions were

performed in 1973 the increase was part of a trend that began 1970. In fact, the largest increase occurred between 1970 and 1971, three years before Roe.

Rosenberg (2004) explains that the reason that abortions did not increase has to do with the restrictions under which the judiciary operates. the judgment decriminalized abortion , but most U.S. hospitals lacked trained personnel to perform this practice surgical , so abortion rights are denied to many women. The Supreme Court not only did not anticipate this setback, but had no tools to correct it.

Measurement of Influence

A final issue worth noting is the influence of the Court in political representation. In the late 1950s, a group of citizens was organized to encourage them to turn to draw districts polling, as the current districting over-represented to areas Country United States, while cities were represented. This caused Congress was dominated by political Conservatives and prevented could adopt liberal reforms promoters go preferred redistricting to the courts Instead of pushing for legislative reform.

Assumed that as the Congress had been elected under the current districting would have no incentive to change the status quo, if Baker v Carr (1962) the Supreme Court decided that the right to adequate political representation was justifiable and therefore, the courts could resolve such cases. The promoters continued to win cases in the following years, so which by 1964 had already had redrawn the districts on the federal level and in 46 states.

Although the redistricting were it the direct result of the intervention of the judiciary, Rosenberg (2004) argues that actually is not possible to say whether the promoters got what they wanted, i.e. to adopt liberal reforms. The problem is that during the decade 1960 in the United States

experienced many political changes, making it difficult to establish a clear causal link between redistricting and expected consequences.

Empirical evidence of *The Hollow Hope* makes clear why it is very difficult for the U.S.

judiciary to bring about social change through their sentences. In addition, Rosenberg (2004) makes his case simple and systematic, but without ever losing its academic rigor manner. Still, it is not obvious why this Rosenberg (2004)'s arguments would be interesting and even useful for Mexican readers that operate in a context of alien to the common law tradition civil law, the answer is simple: From Mexico transitioned to democracy, the judiciary has acquired an increasingly important role.

Therefore, to understand the dynamics under which it operates is necessary to take out studies to decipher what happens once the judgments are issued. It is particularly important to know the impact a long- for decisions of the Supreme Court of Justice and Electoral Tribunal of the Judicial Power of the Federation. The judicial system Mexico is very different to the U.S., but the methodology used by Rosenberg (2004) (assess empirical evidence of the consequences judicial) is a good starting point for study.

Critique on Rosenberg (2004)'s Argument

Law and society have been criticized by Rosenberg (2004) and neorealist focuses in just the backing and direct effects of failures and litigation rights human. According to critics, the law and judicial decisions generate social transformations not only when they induce changes in the behavior of individuals and groups directly involved in the case , but also when cause indirect changes in social relations , or when change perceptions of social actors and legitimate visions promoting world activists and litigants who come to the courts.

Engel and Munger, (2003) has argues against Rosenberg (2004), that the indirect effects of litigation and judicial activism are often more important than the direct effects that focus on the neorealist. In this sense, “although often not legal victories automatically translate into the desired social change, can help redefine Terms of disputes between social groups, both in the short and long term and they can have deep symbolic effects to change the perception of the problem and alternative solutions that have different stakeholders. All this implies that, even when judges rule against the claims of those who promote social change, the judicial process can generate transformative effects to give visibility to the problem in the media or create lasting bonds between activist organizations that can survive the failure and lead to actions group for the same cause different policy scenarios of courts (Engel, Munger, 2003).

Conclusion

The seminal work of Rosenberg (2004) on the known effects of the failure of the U.S. Supreme Court in Brown 1954, which launched a wave of judicial intervention to remove the racial segregation in schools, public buildings and other spaces. against the dominant view of Brown- according to which the failure revolutionized race relations in this country and contributed to the emergence of the movement civil rights of the sixties -the empirical study of Rosenberg (2004) concluded that the judgment had had little effect , and that faith in the courts as engines of social change was a " hollow hope ".

According to Rosenberg (2004) , the public authorities in the southern states of the United States resisted enforce the judgment , so that was the political mobilization of the sixties , and anti-discrimination legislation that resulted from it (and not the judgment) , which achieved desegregation . The Rosenberg (2004) comes to the same conclusion when studying the impact of litigation to decriminalize abortion in the United States in the early the seventies (in Roe v.

Wade) and recently in his analysis of the effects of cases and rulings in favor of the rights of the partners of the same sex.

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Essay/Short Answers

Legal Consciousness and Empowerment

Introduction

The concept legal consciousness is used to name analytically the understandings and meanings of law circulating in social relations. This essay in the first section has described what is legal consciousness is and then has briefly discussed why does it differ between Individuals? The second section lingering the argument on legal consciousness has tried to answer why does not everyone find the law (and rights) empowering?

Legal Consciousness

The concept legal consciousness is used to name analytically the understandings and meanings of law circulating in social relations. Legal consciousness refers to what people do as well as say about law. It is understood to be part of a reciprocal process in which the meanings given by individuals to their world become patterned, stabilized, and objectified. These meanings, once institutionalized, become part of the material and discursive systems that limit and constrain future meaning making. Consciousness is not an individual trait nor solely ideational; legal consciousness is a type of social practice reflecting and forming social structures (Ewick, Silbey, 1992).

The dominant legal consciousness, embodied in legislation, constitutions and law of a given society, protects property relations and the prevailing social and political order, conjunction with the state and politics, law and the legal consciousness of the class dominant constitute an important element of the superstructure-legal-political party above the economic structure of a given society. If the law is in its essence an institution expressed as a system of formalized general binding rules and legal consciousness is starting an element of law. This provides

knowledge of this, judgments about the need for a legal framework of human relations, or other guidance to the legal regime in the life of society and phenomena of social psychology concerning the legal field (Ewick, Silbey, 1992).

Why does it differ between Individuals?

Though one of the main features of the legal conscience are its intellectual character, includes some volitional elements closely linked with socio psychological aspect. They are unique to the legal awareness of society and classes and individuals, the desire to establish one or other legal system and guidance to regulate in legal forms of social relations, the conquest of certain rights, adoption or abolition of certain provisions legal, among others assets elements of legal consciousness are an expression of social activism men, their collectives, groups and society as a whole (Hooks, 1990).

In the deeper layers of social life and the degree of activism of legal rights awareness and immediate social duties. Necessity and justification of the activity classes and social groups should be noted that the need and justification behavior of participants in the patent hoists social relations of the action of the objective social regularities can be designated supposedly the law word because externalized in legal consciousness (as well as the moral and political awareness) as the basis for practical action (Hooks, 1990).

The study of legal consciousness documents the forms of participation and interpretation through which actors sustain, reproduce, or amend the circulating (contested or hegemonic) structures of meanings concerning law. Although researchers collect signs of legal consciousness by observing people thinking, doing, talking, telling stories, lumping grievances, working, playing, marrying divorcing, suing a neighbor, refusing to call the police, or joining a social movement, legal consciousness, as participation in the production of legal meanings, cannot be understood

independent of its role in the collective construction of legality, or the rule of law (Ewick, Silbey, 1992).

Why does not everyone find the law (and rights) empowering?

In our society, laws are not only governing our conduct: they are also intended to ensure the implementation of social policies. And some laws provide compensation for victims of accidents, the payment of benefits for health care and the provision of loans to students who otherwise could not attend university (Hooks, 1990).

The law must also be fair. This means that law must recognize and protect certain fundamental rights, including equality and freedom. The law also seeks to prevent individuals or groups favored benefit from this advantage to exploit those less fortunate. Much has been professed about the fruits of empowerments that law brings in human life, but in practice many social segments, women and children are still deprived of basic rights and in some instances few law as their effect are further disempowering . For instance, all classes commit crime. However, the poor experience higher rates of arrest, criminal charges, convictions, long prison sentences and denial of parole (Hooks, 1990).

The contemporary laws and legal system does not empower everyone, in many instances laws appears to serve upper class, educated citizens whereas poor people still remain deprived of many rights, This winnowing process ensures that most rich criminals never see the inside of a prison, while overflowing them with the poor (Hooks, 1990).

Legal empowerment is not a substitute for other important development initiatives, such as investing more in education, public services, and infrastructure, enhancing participation in trade, and mitigating and adapting to climate change: instead, it complements such initiatives, multiplying their impact by creating the conditions for success. People living in abject poverty

need immediate assistance and specially targeted interventions. The provision of quality education, especially for girls, could not be more urgent (Hooks, 1990).

Legal empowerment is impossible when, de jure or de facto, poor people are denied access to a well functioning justice system. Where just laws enshrine and enforce the rights and obligations of society, the benefits to all, especially the poor, are beyond measure. Ensuring equitable access to justice, though fundamental to progress is hard to achieve (Malatras, 2004). Even if the legal system is technically inclusive and fair, equal access to justice can only be realized with the commitment of the state and public institutions. Legal empowerment measures in this domain must (Hooks, 1990):

- Ensure that everyone has the fundamental right to legal identity, and is registered at birth:
- Repeal or modify laws and regulations that are biased against the rights, interests, and livelihoods of poor people:
- Facilitate the creation of state and civil society organizations and coalitions, including paralegals who work in the interest of the excluded:
- Establish a legitimate state monopoly on the means of coercion, through, for example, effective and impartial policing;
- Make the formal judicial system, land administration systems, and relevant public institutions more accessible by recognizing and integrating customary and informal legal procedures with which the poor are already familiar;
- Encourage courts to give due consideration to the interests of the poor;
- Support mechanisms for alternative dispute resolution;
- Foster and institutionalize access to legal services so that the poor will know about laws and be able to take advantage of them:

- Support concrete measures for the legal empowerment of women, minorities, refugees and internally displaced persons, and indigenous peoples (Ewick, Silbey, 1992).

Conclusion

Nothing can be just immoral. Unfair and nothing can be moral." Or this: "Everything is moral right and everything wrong is immoral." Fair is a partial section of the total circle of morality. I just immediately be founded on a positive legal law, but both the positive law, as positive law, has to be based ultimately on the natural law, which extends only moral, and rejects everything immoral. However, despite the best of intentions, the legislature may enact laws that are possibly considered unfair or inequitable.

In a democratic society, the laws are not cast in stone and must take into account the changing needs of society. In a democracy, anyone who believes that a particular law is flawed has the right to say so publicly and try, by all lawful means, to make change. The study of legal consciousness traces the ways in which law is interpreted and experienced by certain people as they engage, resist or avoid, the legal meanings and law.

References

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