

The powers of the five functions of the state in Ecuador

Las facultades de las cinco funciones del estado en el Ecuador

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ABSTRACT

The design of the functions of the State, within the framework of the liberal regime characterized by political representation, has been deeply criticized from a legal and political perspective. However, since the current Ecuadorian Constitution, there have been significant changes in the institutional design, which have generated a profound theoretical and normative discussion on the validity of constitutional paradigms as old as the tripartition of powers or the form of democracy. However, this apparent dichotomy between types of democracy, in our case representative and participatory, has not allowed us to examine the progress and setbacks in the implementation of democratic institutions in Ecuador. It is therefore necessary to analyze within the constitutional changes, the new Function of Transparency and Social Control, especially the Council of Citizen Participation and Social Control. Especially the power to appoint the highest authorities of the State. At the end of this study, we will be able to establish whether the new form of designation of the highest authorities, together with the new institutional scheme of the Ecuadorian State, become a contribution to the consolidation of the democratic process in our country. At the end of this study, we will be able to

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Keywords: State, constitution, citizen participation, politics

RESUMEN

El diseño de las funciones del Estado, en el marco del régimen liberal caracterizado por la representación política, ha sido profundamente criticado, desde una perspectiva de índole jurídica y política. Sin embargo, a partir de la vigente Constitución ecuatoriana se han producido cambios significativos en el diseño institucional, los cuales han generado una profunda discusión teórica y normativa sobre la vigencia de paradigmas constitucionales tan antiguos como la tripartición de poderes o la forma de democracia. Sin embargo, esta aparente dicotomía entre tipos de democracia, en nuestro caso la representativa y la participativa, no ha permitido, examinar los avances, retrocesos en la implementación de unas instituciones democráticas en el Ecuador. Es por ello necesario analizar dentro de los cambios constitucionales, a la nueva Función de Transparencia y Control Social, en especial al Consejo de Participación Ciudadana y Control Social. En especial la facultad de designar a las máximas autoridades del Estado. Finalizado el presente estudio, estaremos en la capacidad de establecer si la nueva forma de designación de las máximas autoridades, unida al novedoso esquema institucional del Estado ecuatoriano se convierten en un aporte a la consolidación del proceso democrático en nuestro país. Finalizado el presente estudio, estaremos en la capacidad de establecer si la nueva forma de designación de las máximas autoridades, unida al novedoso esquema institucional del Estado ecuatoriano se convierten en un aporte a la consolidación del proceso democrático en nuestro país.

Palabras clave: Estado, constitución, participación ciudadana, política

INTRODUCTION

The Ecuadorian Constituent Assembly's commitment to renew the state structure has generated expectations, in an attempt to bring the state closer to society. However, this search has not been exempt from controversy, which has been very little focused from the academic point of view. For this reason, it is necessary to propose a theoretical and normative review of the advances and setbacks of these changes of constitutional origin. From the above, this research aims to analyze the functioning of the new institutional scheme of the Ecuadorian State, from the establishment of five powers, instead of the classic tripartition of powers, but from an approach of the models of democracy, all this in line with the new form of appointment of authorities instituted in the current Ecuadorian Constitution. To fulfill this objective, in the first chapter, we will begin with a brief characterization of the model of representative democracy within which we will analyze in particular aspects such as the separation of powers, as well as the system of checks and balances including an approach to the model of democracy established in the Ecuadorian Constitution of 1998. In the second part, we will study participatory democracy trying to show its relationship with the crisis of representative democracy, we will continue with a brief conceptualization of participatory democracy, then we will formulate a reconstruction of the origins of the so-called Fifth Power, then we will characterize the new institutional scheme of the Ecuadorian State, and finally we will explain the system of checks and balances of the current Ecuadorian Constitution. In the second chapter, first of all, we will make a brief conceptual approach to the Council of Citizen Participation and Social Control, as well as to the system of designation of authorities as a discrepant element between the 1998 and 2008 constitutions, we will advance with a critical analysis from which we will elaborate a brief comparison of these forms of designation of authorities, in order to establish both advantages and disadvantages of these. With this, we will reach the conclusion of the thesis, which ultimately consists of reviewing whether the current reality of the Ecuadorian institutional scheme is or is not a contribution to the construction of a more democratic Ecuadorian society, at least from a theoretical institutional perspective.

MATERIALS AND METHODS

When reviewing various methodologies and/or stages proposed by different authors in the literature consulted on the subject, as is the case with (Melo, 2010) who applies an organizational analysis methodology that integrates a knowledge management model oriented to bpm, and to the improvement of business processes at all levels of the organization dedicated to the management of exceptional cargo transportation. In another study (Roalcaba, 2008) 1. Identify the risk, classify it and incorporate it into the database. 2. Search for causes. 3. Propose measures for change based on process management. 4. Follow up. Most studies agree that a process management and improvement project consists of three phases: process analysis, process design and process implementation; (Zaratiegui, 1999); (Amozarrain, 1999); (Rivera, 2002); (Trujillo

Barroso, 2011); (Harrington, 1991).

RESULTS

Participatory democracy. But is participatory democracy so new? Actually, not so much, as we have already discussed above, a direct and more participatory democracy was developed before the representative one, and this became the option in the face of the emergence of the Nation-State; however, it is different in terms of the new political conditions that have been emerging. As an example and perhaps the most important, that of the participants, although in ancient Greece equality for citizens was raised, exclusion was the rule, so thousands of people were not considered as such, including women, slaves, which restricted participation to a tiny number of those who lived at that time. What, in our understanding, leads us to believe that for the existence of participation it is necessary for society to intervene in the State in a deliberative way, but also decisively in its management, accompanied by the other two parts, one focused on the satisfaction of material goods and the other on the unrestricted respect for human rights. Now, Chomsky also holds a similar concept of what is a democracy beyond the formal, which he calls "meaningful democracy" Meaningful democracy presupposes the ability of ordinary people to pool their limited resources, to form and develop ideas and programs, to include them in the political agenda, and to act in support of it. (BROJAS.CALDERON, 2018) In the absence of resources and organizational structures that make this activity possible, democracy is limited to the option of choosing between several candidates who represent the interests of one or another group that has an independent power base, usually located in the private economy, At this point, we can establish a simile with participatory democracy, At this point, we can establish a simile with participatory democracy, with which it gives content to representative democracy, establishing that if the individuals of a society cannot bring their points of view and support them in the state structure, the only thing left is a formality of democracy, basically expressed in the elections of this or that candidate, who even already has a perspective from his or her economic class. An example of the aforementioned, which is worth mentioning, and which is embodied as a normative provision, is what refers to the incorporation of some mechanisms of direct democracy. Our Constitution tells us that the participation of citizens in all matters of public interest is a right to be exercised through the mechanisms of representative, direct and community democracy (Art. 95 C.R.E).

What we are arriving at is that the problem, perhaps, is not solved simply in the coexistence, but in the complementarity between representative democracy and participatory democracy (B. Souza Santos, 2004: 68-70). de Souza Santos, 2004: 68-70), clearly understanding that we must continue in the search for new forms of integration and greater incorporation of new social actors, with which we can strengthen, over time, a maximalist perspective of democracy, for which we can turn to generate new ideas on the strengthening of participatory democracy⁷⁴, and thus be able to build experiences

that can invigorate democracy, both from the social actors and from the State; a problem that we will address with the new institutional framework in the framework of participatory democracy. It is clear, then, that these bodies try to break with this inequitable and rights-violating State, understood as the paradigm of the liberal and neoliberal State, of course, without denying that in the constitutional State these rights cannot be violated, but with a clear connotation of a greater weight of the role of regulation of the State public power to the Law; therefore, much more guaranteeing and respectful of rights than in the previous Liberal State. It is for this reason that the struggle of the social movements and the Ecuadorian citizenry, since the mid-1990s, inevitably ended in a new Constitution, thus betting on the construction of participatory democracy, together with a new institutional framework that is in line with this new model. Boaventura de Souza, in this sense, argues that: "Social movements would be inserted in movements for the expansion of the political, for the transformation of dominant practices, for the increase of citizenship and for the insertion of excluded social actors in politics. We can see in the constitutional text several important issues; in the first place, it is identified as an independent body that assumes a task on behalf of the citizenry to activate social control over state powers, without assuming that this commission fulfills the functions of the Prosecutor's Office or the Comptroller's Office. Secondly, this body was supposed to fulfill its functions in representation of the citizenry in the fight against corruption, with which we can see that it is a commission that at least in its constitutional structure is declared to derive from representation. Thirdly, it is given the power to request information from any official, the CCCC had to bring its findings to the attention of the Public Ministry or the Prosecutor's Office. (BORJA, 2012)

DISCUSSION

Democratic procedures, in the capitalist system, should have allowed the realization of the essential component of liberal democracy: the protection of the people from tyranny, and, in the long term, the establishment of the power of the people. In this sense, we emphasize that representative democracy, for its implementation, contemplated several procedures aimed at restricting the possibility of abuse of power, among them the separation of powers. The theory of the division of the three powers is the most widespread, however, over the years, it has begun to be left behind because it is a concept that transcended beyond its historical version. Therefore, there is no patented model, we cannot assume it as a dogma, but it can be configured in different ways, which will depend on the political, economic, historical conditions of a particular State. Of course, the model of the three powers carries, consubstantially, the system of checks and balances with which it has been tried to control the power from the power, with the aim of reaching a balance of the different components of society. Here a question arises: Was it feasible to guarantee that each branch of power effectively represented a different part of society? The answer is negative, because, instead of obtaining control of power, at least in the Ecuadorian case, the ambition of particular groups (minority) and the lack of control of power ended up being consummated,

allowing the emergence of these imbalances that triggered in Ecuador from the struggle of powers to the assimilation of these in the hands of a single one. Although representative democracy was defined to represent the different groups of society and, to a certain extent, it succeeded in the beginning, this representation has been narrowing, with an institutional framework that has fallen short to be the transmission belt of society's need for participation before the State. The institutional framework has not been able to regenerate itself to bring the State closer to the citizens, which has generated a rupture that has been directed towards the irruption of a political and academic current that does not believe in representation as the only way to exercise their rights. Rather, it proposes greater control from the citizens towards the state powers, with which it is necessary to forge a new institutionality that allows to gather that participation. Undoubtedly, it is here that the so-called new Latin American constitutionalism brings a significant amount of contributions to the democratization of our societies, seeking to overcome the crisis of representative democracy. We can say that the representative system was born promising us something that today it is not in a position to fulfill, that is, to accommodate all sectors. This has not been assimilated by representative democracy, due to its incompatibility, both theoretically and practically, with the inclusion of new and broad sectors of the citizenry in state participation. It is here that this new type of organizations and social movements seek recognition, but at the same time carry out a social control in the face of the incapacity of the organs called to do so, and they do so from a civic and not a purely corporatist point of view. In this sense, the political problem would be solved in the complementarity between representative democracy and participatory democracy, with the clear understanding that the search for new forms of integration and greater incorporation of new social actors must continue, in order to strengthen a maximalist perspective of democracy. Although it is possible to speak of the first attempt to institutionalize a fourth power, be it electoral power or citizen power, in the 19th century by the hand of Bolivar. It is in the 20th century, with that inspiration, that the new state functions were built in Venezuela and Ecuador, different, but from a common trunk, which for us is the Function of Transparency and Social Control. We could see that the Constitution of 1998 started from a rhetorical vision of participation, and we landed in a Constitution of 2008, which tried to reflect the potential of participatory democracy, both from the hand of progressive political sectors, as well as from the social movements and, of course, from the "participationist" and "republican" intellectuals who contributed in its construction. Therefore, we can denote that this change of institutional paradigm was seen by the constituent as a means to achieve citizen participation as the axis of the new Constitution, with which it is proposed to build, from the State, an organization that can move those gears that allow us to make this leap; in this framework the CPCCS was born. However, we should not make the mistake of converting participatory democracy into the panacea for the solution of problems between society and the State, this should be considered as a path that is being built in different places and at different times; which is also plagued with vicissitudes. In this context, we highlight four aspects: the first is that

in the face of the crisis of representative democracy in Latin America and in Ecuador in particular, there was an increase in political participation through which the citizenry felt part of the decision-making process, which in the end the limits of representation could not find the way to digest these expressions. Secondly, this resulted in processes of struggle that formed political projects, which embodied, in the new constitutions, the idea of a revitalizing force of representative democracy in complementarity with participatory democracy. Thirdly, this new democracy under construction bursts with the formation of a new institutional framework, in which the Transparency and Social Control Function plays a preponderant role, but more than the function itself, it is the Council of Citizen Participation and Social Control. Fourthly, it should be noted that, in the participatory model established in the 2008 Constitution, the State ends up assuming an active role. It is worth emphasizing two dangers or warnings of this model established in the Constitution, the first one is to encourage today more than ever the need to strengthen a system of checks and balances that is adequate for the new institutional scheme of five powers, because without an adequate apparatus of controls, the primacy of one or some of these powers over the others is propitiated, especially this danger in the current system is related to the presence of a very strong Executive. Moreover, since the Executive has to designate the authorities among its functions, the presidential model prevails, which may generate an imbalance of state powers, generating a crisis a posteriori. The second danger is that the active role of the State as a generator of citizen participation may end up inhibiting grassroots participation or, in the worst case, may co-opt it politically for its use and social legitimization. Finally, given the complexity of the new social actors, the new political moment demands that we move from this constitutional imaginary to generate proposals that take us beyond participatory democracy, that is, to radicalize democracy. This will only be possible if we manage to combine the Constitution with democracy in its broadest sense; for this, it is of utmost importance that the Law, as Cárcova tells us, being in the hands of those from below, can be an instrument of social change, and not continue to be an instrument of conservation of the establishment, this through the possibility of a construction of democracy from below, from the citizens. We agree with Cárcova, when pointing out that the Law, therefore, the Constitution and other infra-constitutional norms must have the objective of generating processes of change, but not be an impediment to it, and become the cancer guard of the status quo. The new regime of participation established in the Constitution comes from a sort of experiment of the constituent based on social demands and fundamentally on the need to complement and expand the representative democracy that was in crisis, with the decision of the Ecuadorian constituent to expand the margins of citizen participation, but concretizing this aspiration from the state level with a bold importance of the implementation of this new constitutional normative framework.

In this undoubtedly novel institutional scheme, the role of the Transparency and Social Control Function stands out, an institution created by the Ecuadorian constituent in the

search for building citizen power in the discourse, but which in the end opted more for state intervention as an actor that leads citizen participation, in the search for strengthening state institutions.

We conclude that the survival of a mixed model of democracy in the Ecuadorian constitution allows the coexistence of representative democracy, participatory democracy and even community democracy, which does not mean that they are built in a civic way from below, but rather from the increasingly preponderant effort of the State, as a transversal axis to recover for it, the spaces lost in the liberal and neoliberal tradition of recent years. Likewise, this functioning of citizen participation from the state has put it in serious dangers, since, as we have seen, it is prone to political co-optation, intensifying these dangers the role played by the State as leader of the processes of participation, thus limiting the role of the citizen. The problem of the control of power must come from better and qualified mechanisms that allow the functions of the State to control each other, as a form of institutional control of the institutionality itself, in order to avoid a crisis of legitimacy that could lead to a new democratic crisis.

We verify that, in terms of design, the CPCCS becomes an institutional guarantee that allows to ensure the enforcement of the rights of participation, understanding that this should be its main role, however, its increasingly intense role in the appointment of authorities as we see is leaving aside the other constitutional powers, especially that of ensuring the validity and respect that citizens have to exercise their rights to participate in the state. 6. The form of election of the highest authorities of the country, we have seen is developed in a double mixed system that on the one hand links participation and meritocracy, but on the other hand intertwines citizen participation with state participation, this due as a characteristic of the model itself. Understanding that this mixed system is increasingly supported by state institutions.

It is worth emphasizing that the current form of designation of authorities has the viability to potentially extend the margins of citizen participation and deliberation, in contrast to the forms of the liberal representative model that contemplated forms of designation that, although they had a deliberative margin, were elitist and partisan. In addition, it is important to emphasize that in the current competitions there are phases of opposition, merits and citizen challenge, which accentuate the possibility of having the best citizens as the highest authorities, contrary to what happened in the previous forms of appointment that did not guarantee these aspects, but the election was the result of the parliamentary game.

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