Mejía Quintana, O. (2016). Consensual Theory of Law. Law as public deliberation. Bogotá: Universidad Nacional de Colombia.

To show that the consensual theory of law constitutes a ***post-positivist*** and ***critical*** response to the main conventional iusphilosophical and theoretical-legal problems.

It addresses a reference to society, history and legal paradigms; epistemological prolegomena; the consensual theory of justice; the discursive theory of law; and the general conclusion.

The consensual theory of justice by John Rawls and the discursive theory of law of Jürgen Habermas, allow to found a consensual theory of law, of critical, post-liberal and democratic character, that tends by a deontological perspective of good judicial decisions for everybody and defines the scope of the legal thing from the citizen deliberation articulated like public reason and constitutional patriotism.

What has happened in Colombia with the Constitutional Court in recent times shows that it is not healthy to essentialize institutions and make uncritical and abstract defenses of them. Institutions, however well designed, are subject to the dynamics of power and human nature. In this context, what has broken down is not only institutions but also a way of conceiving law.

The institutional crisis of justice is only resolved deliberately, when society assumes the law as a deliberative reason and the biased and exclusive conception of the country and its institutions embodied by authoritarian and alienated minorities, political, economic or technocratic, is replaced by a deliberative patriotism both on the constitution and on the concept and construction of law.

Philosophy of law corresponds to a philosophical and not a theoretical-legal tradition and, therefore, it is framed within the limits and problems of practical philosophy and not of legal theory. The latter has made enormous progress in terms of its epistemological definition and thus marks out the set of philosophical sub-disciplines and social disciplines. The triadic structuring of their particular problem has to be claimed as a significant epistemological achievement that legal reflection has to assume and deepen without the need to resort to philosophy, nor to confuse legal theory and philosophy of law.

The constitutional jurisprudence, although it has to be vindicated as an instance of defense of individual and social rights, as well as a wall to contain the authoritarian and exclusionary attacks that in the current contexts try to submit the constitutional political consensus to the imposing decisions of totalitarian majorities, has, however, to be considered in its real possibilities.

It is worth noting the contrast that Rawls introduces between consensual constitutional democracy and liberal procedural democracy insofar as the latter favors arbitrary impositions of the majorities while the former is governed by a broad consensual public deliberation.

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