

■ EDITORIAL

Constitutional Interpretations: Trends and Proposals

On a subject, such as constitutional law, which constantly revolves around the principally constructed categories, in many cases, for centuries the work of constitutional interpretation seems to be a beacon of light in a dense darkness.

The paradigm shift that resulted in Europe at the beginning of the century, –the United States ran in the other direction– passed through a process of transformation from the ideological and exclusive positivism to a methodological and inclusive positivism, and had as a transcendental repercussion the abandonment of a nominal Constitution replaced a the a normative Constitution.

The emergence of a new Constitution, not only binding, but an axis of the legal system, posed new challenges that required new solutions.

Constitutional Interpretation was introduced as a specificity in the study of constitutional law in relation to the philosophy of law. Its differentiation from legal interpretation, supported for the most part by the doctrine –even though the presence of *enfants terribles* denied it with strong argument– was based on the particular characteristics of the Constitution as law. However, it was with the specialty that supreme law confers. From the outset, the profusion of works from such different points of view became obvious, which have occupied full shelves of libraries and hundreds of pages in specialized law journals.

Curiously, an area that might not seem given to digressions, as constitutional interpretation, has motivated important doctrinal debates to the extent that they are the minimal common ground that we understand as accepted by the majority of authors.

Few subjects such as constitutional interpretation directly or indirectly have had such little consensus. We need to remember, for instance, the debate over principles between Fosthoff and Smend during the Weimar Republic, or maybe one of the most commonly known disputes under the framework of Constitutional law: the debate between Schmitt and Kelsen on who should be the Constitution's defender. While linked with the defense and the Constitution's capabilities, it was no less about who should interpret the Constitution. In the Anglo-Saxon world, the debate between Hart and Dworkin had great significance over the value of principles and rules, and the role of the judge in the interpretation and application of the Constitution.

Today's advances in constitutional interpretation taking other paths. Even though, at first, it seemed that this area resisted the changes of law within the framework of new trends, such as feminism and cultural studies; the fact is that

it has not been like this. We are in a moment of rapid change where the interest in constitutional interpretation has increased and diversified. This is due to its intrinsic relation to issues of enormous magnitude in the constitutionalism of our day: *guarantism*, the balance of rights, the issue about the democratic legitimacy of decisions taken by interpreters, the role of ordinary judges and of constitutional judges, the new constitutionalism, and the will of constituent power. Practically, any area of constitutional interest currently in vogue is related in some way to the general problem of constitutional interpretation.

However, it seems that such diverse positions could end up reaching the ever-recurring formalism/democracy axis. It is no longer about debating if the Constitution is normative or not, but how it is normative and to what extent it can be applied. Especially, if it does or doesn't obey a popular will that determines its democratic character. Thus, jobs like those presented in this issue of IUS are so necessary today. Especially when we are facing a new paradigm of constitutionalism, as it was in the paradigm shift, that led to the democratic constitutionalism of the early twentieth century.