

# POLITICAL LAW

Dace Krūmiņš

Researcher

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## INTRODUCTION

An important branch of the social sciences, widely developed in modern times, and still under construction, is SOCIOLOGY.

Unfinished science, presents in its bosom, a debate that makes many of its concepts are not properly defined, there is confusion on many subjects.

The above has led more than one author, to the anger of sociologists, to point out that it is still an unfinished science and that it has a certain chaotic character in its formulation.

However, sociology is able to give us certain concepts that allow us, in this case, to get closer to knowing that phenomenon called SOCIETY.

Just as sociology is a branch of the social sciences, so is Political Science and Law.

The specificity of sociology, or rather, the object of its study is "the conditions of existence and development of human societies."

The state is, without a doubt, an expression of these human societies and, therefore, constitutes a sociological phenomenon. But, it is also a political phenomenon and a legal phenomenon.

Therefore, from a sociological perspective, the state must be observed as a society and its systems of government; it is what is called POLITICAL SOCIOLOGY.

In this course we will not do political sociology properly, without prejudice that we will constantly touch with it. What interests us in this phase is to know some concepts that sociology brings us, to introduce us to the study of what are the specific objectives of this course:

- a.- Analyze the evolution of the concept of State as a model of political organization;
- b.- Distinguish its elements and relate their characteristics;
- c.- To know and evaluate the different political regimes and their effects on society and the State; y
- d.- Understand and synthesize the Theory of the Constitution.

So let's look at some of these primary concepts:

In human reality, it is possible to distinguish three aspects, notwithstanding that reality is not exhausted in them:

1) **WORLDNESS**: with this we want to emphasize the fact that the human person is surrounded by things - be they animated and inanimate - and other human beings. Man is not alone, he is in the world, and that world contains elements that accompany him.

2) **SOCIABILITY**: according to this element, man has a tendency to link to other men, to whom or on whom he projects his activity. In the same way, the activities of their fellows affect him.

3) POLITICITY: by virtue of this element, man, who is in relation to his fellows, seeks with them, to organize and carry out common coexistence.

Of these three elements, briefly defined, we will delve a little deeper into SOCIETY:

In SOCIABILITY, it is possible to specify three aspects that make it up or integrate it:

a.- The individual "I", which asserts itself differently from others.

b.- The "YOU", which is the similar being with which the "I" is linked.

c.- Finally, there is the "WE", which has been the group composed of the "I" and the plurality of "you" with which the "I" is related.

The first sociological experience of man, that is, the first thing that man perceives is "you", that is, his relationship with another similar being. Specifically, this means that, usually, man, first of all, enters into a relationship with his mother, a relationship that is not the biological of pregnancy, but that which opens the human being to life when he is born.

Man comes to life as a result of the fact that before he was born, a group has already been formed, the family (understood in its different variants that we know), within which the father and mother transmit life.

Man, when born, is in a state of obvious precariousness. He will not be able to survive without the help of others.

Hence the sociable character of the human being; it is given by its very nature.

Aristotle said, recognizing this character of man's social being, that "he who lives outside society by organization and not by effect of chance, is certainly a degraded being or a superior being of the human species. ; he is a brute or a god. "

And it is precisely this sociability of man, which makes possible, for example, language.

Language is but the mechanism by which the rational being expresses his needs and communicates his ideas and feelings.

In short, we postulate that the interpenetration between the individual and society is so profound, that only through this process can man develop to his full potential.

Man is, in a sense, conditioned by society, but, at the same time, he acts and has an impact on it by influencing it.

Thus viewed from the human being, that is, as a social being, it is necessary to refer to human groups.

In particular, we will try to formulate a kind of GROUP THEORY.

The social bonds that man has built have been the subject of multiple definitions and classifications. However, the main link, ie that parent link, is THE GROUP.

A series of group forms with differentiated characters emerge from the group. Hence, the group has a generic character, from which various species are derived.

The GROUP is a plurality of beings that form a set linked to some form of relationship.

The first conclusion we draw from this concept is that a simple plurality of beings does not necessarily constitute a group. Thus, a simple fortuitous agglomeration of people does not constitute a group.

In the Group, this plurality has a binding element that causes a certain form of relationship to occur between such beings.

This agglomerating element, or in other words, this special form of relationship, can have various origins. This is how this origin can be exogenous or endogenous, that is, in the first case the binder element is given from outside the group, and in the second situation, the binder element arises from within that plurality of beings.

Let's look at some examples:

The FAMILY, viewed as a group, is a plurality of people linked by the imposition of nature, that is, an exogenous binding element.

A SPORTS CLUB, on the other hand, is a plurality of people united by a free agreement of wills, as can also be a COMMERCIAL SOCIETY. In both cases, the binding element is of endogenous origin: free will of individuals.

But we can also find GROUPS formed in fact, where both exogenous and endogenous elements are combined. Thus, for example, a group can be born to help people who are victims of a catastrophe. There, the endogenous element is the sense of solidarity of those people, and the exogenous element is the occurrence of the catastrophe itself. In short, both elements are present or are the cause of the formation of that group.

Within the variety of possible groups, we can distinguish the COMMUNITY.

Our Civil Code, in its Arts. 2284 and 2285, understands the Community as a quasi-contract resulting from a lawful act, such as the community that is formed by buying several the same thing.

Sociologically speaking, however, the Community is formed, rather than in the concurrence of a fact, in the perception that several subjects have of feeling linked to each other by some form of relationship.

According to what we have seen so far, we can postulate that the agglomerating element of the group is A FACT, while the binding element of the community is a CERTAIN FEELING.

Let's also look at another element that is present in the groups.

If the group is more complex, we will find a group class called SOCIETY.

In the Society is added as an agglomerating element also the ORGANIZATION, in such a way that we can say, sociologically speaking, that the Society is an organized group, that is, a group properly structured and conditioned for some purpose, which lives a process of consolidation as group, and strengthening as a community.

Within the organized groups, we can distinguish several species:

- 1.- The Associations, that arise exclusively from the spontaneous will of their components and that are projected in pursuit of limited or accidental objectives.
- 2.- The Societies, which are organized groups that pursue permanent objectives.
- 3.- Organizations, which are structures endowed with human and material resources, without considering their purposes; y
- 4.- The Estates, that are parts of an organized group of greater complex character, whose agglutinating element is the type of functions that carry out.

It should be noted in these matters that there is an old discussion about the nature of societies.

Some argue that societies are a being with its own existence and separate from that of its components. To this end, our Civil Code defines society in its Art.2053 as "... a contract in which two or more people stipulate to put something in common with the aim of sharing among themselves the benefits that come from it. The company forms a legal person, different from the partners considered individually".

Others, however, believe that society is an accidental reality composed of forms of intersubjective relationships, such that if there are no such relationships, there is no society.

Our legal system expressly recognizes companies as having a different legal existence independent of the existence of their components.

It recognizes their own life, and even more, it recognizes their own personality. This is how society has the right to its own name and address. Like a man, societies have a date of birth and an date of extinction.

The only difference between the person society and a natural person, is that the first must act through a representative, who ultimately will always be a natural person. Instead, the natural person can act for himself or represented by another natural person.

Returning to our topic, GROUPS, like their components, are not static realities. They are in constant motion.

That movement is what generates social processes.

Social processes can be structured or unstructured.

When the social processes are structured, bodies are established that exercise functions with the planned processes. Such organs seek to frame constantly evolving human behaviors.

Human behaviors can be presented in the following ways:

- + Simply individual acts or facts (Ex .: reading a book).
- + Interindividual acts or facts (Ex .: comment on that book read).
- + Social acts and facts (Ex .: edit and publish a book).

Social acts and facts are the expression of man's societal instinct or they can also be an expression of a social need.

Let us now look, briefly, at how the sociological concept of organized society is structured:

In sociology it has been defined that a society is organized when, at least, the following elements concur in it:

- a) The form of entry and exit is regulated. That is, the form of incorporation and expulsion of the same.
- b) When its organs of authority have been defined, that is to say, who directs the society and what are the attributions of that authority.
- c) When its aims and objectives have been defined, and the means to achieve them have been established.
- d) When it has been defined how the holders of its various bodies are appointed and the time in which they will perform their functions, and finally
- e) When the obligations of its components have been defined, and the way in which discipline is maintained in the fulfillment of such obligations.

All these requirements must be met copulatively, to qualify an ORGANIZED company.

Very close to the Society, the idea or concept of INSTITUTION is located.

Some believe they see an Institution when we are faced with a Society based more on exogenous causes (that is to say of nature) than on the will of man (endogenous cause).

That's why some talk more about the Family Institution, for example.

It has been said that the Institution is a human community united by a common idea or need, and subject to a fixed authority and rule, which maintains its essence over time, even if its members or organizational form change.

Taking up the Society, an aspect of it that must be the focus of special attention for its relevance, is the phenomenon of the command-obedience relationship always present in this class of groups.

This phenomenon is vitally important in the case of political society, being the main object in all studies of this class of societies.

Let's see, first of all, what command is and what obedience is.

THE COMMAND is the order or set of orders that are given to another to act in disagreement with the will of the commander, and are the most relevant expression of the power that a superior has over his subordinates.

OBEDIENCE is the acceptance, obedience and conformity of the one who receives the order, expressed in the accomplishment or execution of what the one who commands has asked to him. That is, obedience means acting in accordance with the will manifested by the superior.

The obvious and inevitable conclusion that is drawn from both concepts is the following: WITHOUT OBEDIENCE THERE IS NO COMMAND.

Therefore, the determining factor in the command-obedience relationship is the latter.

Let's see then what are the requirements of OBEDIENCE:

- 1) First of all, the title of the person in charge must be regular. This means that the one who obeys knows that title and accepts or admits it. From his perspective, he perceives that the title is legitimate.
- 2) Secondly, it is necessary that the order, that is, the content of the order, be included within the sphere of attributions of the person exercising the command (A traffic police officer may divert me from my route, but he cannot force him to cut the grass in your house).
- 3) Third, the order must present fair and reasonable content (the problem is to determine who qualifies the content).
- 4) Fourth, the possibility of the order being executed also depends on the influence of the person in command over the one who obeys, an influence based mainly on the rectitude, versatility and experience of those who give the order to those who obey it.
- 5) Finally, in fifth place, the fulfillment of the order also rests on the conviction of the one who obeys, of the rectitude of the one who commands, as far as his intentions and purposes.

These requirements presuppose the existence of a rational obedience, in which a voluptuous process of the one who obeys is present.

Under these conditions, obedience becomes a natural process, that is, the logical consequence of an order surrounded by such attributes.

However, there is another kind of obedience, which we can rather call OBEDIENCE. This is an almost blind adjustment of conduct to imposition.

This phenomenon, which also tends to be situated within the command-obedience relationship, is, however, a diverse phenomenon. In obedience, the central element present is strength. There is no rational process of obedience, but a reaction to a coercive stimulus. Throughout this process, the freedom of the one who obeys is absent from his conduct of obedience.

Another important aspect present in societies is related to distinguishing between civil society and political society.

Civil society is basically the set of associations, institutions and smaller societies that make it up, and that can take various forms, whether nomadic or sedentary. For example: peoples and tribes.

When these civil societies are organized, to a greater or lesser degree, they adopt the name of Political Societies.

In history we can find them under the name of Polis, Civitas, Republics, Feuds, Empires, Countries, Kingdoms, Principalities, etc.

In modern times, the maximum expression of organization of a political society, is represented by the STATE, and is the main object of the study of contemporary political science.

Another relevant aspect of groups, and their expression in societies, is related to the idea of NATIONALITY and the NATION.

In the process of organizing the group, whose culminating point is the constitution of the state, nationality plays a relevant role, and its concrete expression: the nation.

The Nation is the community of people united or linked by the feeling of nationality. (Remember that community is the human group that has the perception of feeling bound by "something").

In the Nation, that "something" is the feeling of nationality.

The feeling of nationality, above all, a plural feeling. This means that it is present in a significant number of people.

The content of this feeling is given by the consciousness of this plurality of subjects, of being depositories of a set of values (others speak of interests), that have been formed through a prolonged period of coexistence or common life, by several generations, and usually within a given physical space, which is called territory.

Those who have this common feeling have a positive admiration or appreciation for the group's past.

They look with optimism at their present potential, and tend, strongly, to look to the future in positive terms: they believe they will improve.

This perspective leads the group to combat and suppress all those negative aspects that they present, and to affirm the positive ones, projecting them towards the future in a plan of increasing improvement.

Thus, the NATION is the human group aware of its participation in a community of values or collective interests, acquired throughout the coexistence of several generations, which makes them feel linked in the present, and willing to remain united, projecting themselves in a collective process of progress towards the future.

We said that this feeling of nationality, which makes a group form a Nation, is the one that tends to the formation of the State.

It is this combination of psychological, individual and collective consciousness, which becomes the idea-force that dynamizes the process of state creation.

It is through the state that the nation organizes and institutionalizes its coexistence, in order to make it more effective for the affirmation of the group and its progress.

That is why, historically, we can appreciate that those most consistent states are those integrated with people belonging to a single nation. The homogeneity of its members makes it possible, with greater success, to achieve collective well-being.

But history also shows that states have been formed that contain several nations. In Belgium are the Flemings and the Walloons. The former Yugoslavia contained Serbs, Bosnians and Croats. USA it is made up of a crucible of nationalities, and, apparently, it has been able to fuse them into an ideal of collective life that represents all its inhabitants.

Let's look at the role that the territory plays for the nation.

In this regard, there is unanimity in considering that in order to initiate the formation of the feeling of nationality, it is essential for the group to have a territorial seat. This means a moderately delimited physical space.

However, once this feeling has arisen and strengthened, it acquires such strength that it is even able to survive even if the territorial settlement concludes.

The typical example that, in this sense, is cited is that of the Jewish people, who, despite their long diaspora, managed to survive for centuries without a territory and being scattered around the planet.

The above, in any case, does not mean that the territory is dispensable for the nation.

Depending on the degree of evolution and development of the nation, it will be able to withstand more or less time without a physical space in which to settle. But, in short, it will tend to settle in a certain territorial place, because it needs it to guarantee its future subsistence.

In summary, we must state that in order to understand the phenomenon of the state, it is essential to first understand the concept of nation to which we have referred.

Without him, we could not understand all that doctrine elaborated from the concept of NATIONAL SOVEREIGNTY, or to understand in phenomenon of the nationalist ideologies, or the emerging International Law.

The Nation is not an institution. The state is.

The idea of Nation, however, necessarily leads us to the idea of State.

The Nation is, in short, the strongest foundation of the State.

Thus, today, when one seeks to define the State in simple terms, it is pointed out that this is the politically organized Nation.

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