SUMMARY

DEBATE
Political judgment and impeachment in American presidentialism

STUDIES

ACTUALITY

IMPEACHMENT IN THE UNITED STATES: LAW OR POLITICS?

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ABSTRACT

This article argues that impeachment is not a precise rule or set of rules that describe what could be criminal behavior by a President and that these rules can be unveiled using traditional constitutional interpretative technique. Rather, it proposes understanding impeachment as an issue that demonstrates a battle over dominant economic, cultural and political ideology. In order to achieve this goal, the article starts out by presenting mainstream ideas about impeachment. Then it provides a brief description of two previous experiences with impeachment in the United States, Nixon and Clinton. Finally, the text proposes a different reading of the debate using Critical Legal Studies and describing radical conservative ideas embodied in president Trump.

KEY WORDS

Impeachment of Donald Trump, constitutional interpretation, originalist interpretation, sistematic interpretation, Critical Legal Studies.

IMPEACHMENTS IN LATIN AMERICA: REFLECTIONS ON THE COLOMBIAN CASE

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ABSTRACT

Impeachment is linked to the essence of democracy as it serves as a mean for the application of the republican principles of equality before the law and the responsibility of the rulers.

The countries of Latin America have the formal possibility of claiming political responsibility, even from their first constitutional pieces, but there are practical limitations of design and operation that hinder their effectiveness, as in the case of Colombia.

KEY WORDS

Impeachment, check and balances, legitimacy, good government.

THE REVOCATION OF THE PRESIDENTIAL MANDATE IN VENEZUELA: A CONTROVERSIAL INSTRUMENT IN ITS PRESIDENTIAL SYSTEM

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ABSTRACT

The present work approaches from a theoretical-practical perspective the consideration of the revocation of the presidential mandate in Venezuela as an institution that has been distorted in its original essence as an instrument of citizen power. It has become a political medium in which the legislative power, being devoid of other institutional means, tries to limit the executive power and depose it in its mandate, having seen the National Assembly increasingly devoid of its capabilities and powers before a power executive plenipotentiary that controls the rest of the powers of the nation. However, in light of the events that will be described in the article, it is true that citizen power, a bulwark of the new Latin American constitutionalism, remains a simple principle that decorates the Venezuelan constitution.

KEY WORDS

Revocation of the presidential mandate, participatory democracy, political control, executive power, legislative power, citizen power.

POLITICAL (UN)CONTROL IN ECUADOR: HISTORY, LEGISLATION AND REALITY

Ramiro Rivadeneira Silva

ABSTRACT

The article addresses political control in Ecuador with a realistic perspective: Ecuador has not reached the democratic maturity that allows its citizens to coexist in a state of law, legal security and political well-being. Although the various Ecuadorian Constitutions have clearly established the principles of political relations including the political judgement, they have not been materialized for the fulfillment of democratic purposes as the power relations have not respected the constitutional norms. Ecuadorian history has been marked by warlords, civilians and military who have come to power without respecting the rule of law, and the armed forces that played a political role being key actors, visible or not, at times of destabilization of democracy. The coups d'état and dictatorships have been a constant, as well as the drafting of new constitutions that for the same reasons of continuous breakdown of the democratic State, never ceased to be inserted into the political life of the country.

KEY WORDS

Constitution, political control, political judgement, armed forces, power, coup d'État, dictatorship.

PRESIDENTIAL LIABILITY IN MEXICO. A CURRENT DEBATE

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ABSTRACT

There is a current debate in Mexico regarding the presidential liability. In the XIX and XX centuries, the president of the Republic has concentrated the power without any counterpart. In fact, the responsibility of the chief executive has been an ambiguous, complex and impossible to comply constitutionally: from their immunity, the president is unpunished. Since the independence of Mexico (1810) to the revolutionary era (1910) and constitutional one (1917), the presidential power has not assumed any responsibility for their arbitrary acts. In the current presidential government (2018-2024), however, some ideas have arisen to establish two constitutional figures to ensure the presidential accountability: on the one hand, the withdrawal of their mandate through a popular consultation; on the other hand, to enable their prosecution for any crime without requiring any parliamentary control until the issue of a condemnatory sentence. In this article, challenges are described in order to discuss the aforementioned constitutional reforms.

KEY WORDS

Official responsibility, presidential power, political judgment, parliamentary immunity, constitutional privilege.

VINDICATION OF KANTIAN CONCEPTION OF LAW AND CRIME: AFTER FREEDOM

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ABSTRACT

This article reflects on the validity of reason and freedom in Kantian thought —meaningfully political freedom—, along with a critical approach on certain aspects of the evolving conceptual system, what is surrounded by the contradiction between the Kantian conception of the crime and the punishment. However, the text warns that this contradiction is not the reason of the decline of the Kantian ideas of the law and the crime endorsed by the role given to the freedom in this construction. It demands that conception otherwise. In line with this, the article holds that denying the Kantian program for universal freedom does not arises from their internal contradictions, but on the part of a movement of contesting it such as within the dimension of material history, such as the history of human thinking. Regarding criminal law, struggling against the liberal criminal law. Besides this, the text examines the attack against the reason and its confrontation between factuality and validity. Focused on the philosophical and legal reasoning, traceable with the critical to the Kantian paradigm from Heidegger to Welzel along with different variants of hermeneutics, which transform the factuality in normativity in different ways. At the same time the idea of the so-called «Criminal law for the enemy» becomes another link within the authoritarian struggle against the rule of law.

KEY WORDS

Kant, political freedom, punishment, offence, enlightenment, counter-enlightened conceptions, enemy's Criminal Law.

KANT ABOUT CRIMINAL LAW

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ABSTRACT

The Metaphysics of Morals develops Kant's Law theory. Kant emphasizes his arguments within the discussion he hold with Beccaria. Not only concerning the death penalty, but also in relation to the foundations of punishment and criminal law. Particularly, he develops a deep reflection on equality and freedom. These both concepts are analyzed in this essay. To do this, we will focus on the Kantian approach to two key issues in the discussion of the criminal doctrine like the death penalty and the abortion.

KEY WORDS

Kant, Criminal Law, equality, fundamentals of punishment, death penalty, abortion.

THE ESTABLISHMENT OF CORRUPTION AS CRIME. ITS MEANING AND OFFERED SOLUTIONS IN THE HISTORICAL MODERN THOUGHT

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ABSTRACT

This article analyses —from an historical and philosophical approach— the establishment of corruption as an offense or reprehensible behavior by the thinkers of the Modern Age. Accordingly, it will study the criminal meaning that was given to the corrupt-operations since the fifteenth century by the first theoreticians of the State. Nevertheless, this writing also will attend to another historical and political aspect, in order to contextualize and facilitate the understanding of the analysis, because the thought of a specific moment is indissoluble to its appended circumstances. Finally, it will observe how the proposed solutions will not differ from the proposals offered by the competent and contemporary authorities, because the mechanisms for combating the corruption haven't undergone significant innovations. This may be the main reason of problem subsistence nowadays.

KEY WORDS

Corruption, crime, philosophy, Modern Age, theory of the State.

POLITICAL PARTIES AND CRIMINAL RESPONSIBILITY: A REFLECTION ON THE SYSTEM OF PENALTIES

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ABSTRACT

Under Organic Law 7/2012, of December 27, which modifies the Organic Law 10/1995, of November 23, of the Criminal Code on transparency and fight against tax fraud and Social Security, political parties were subject, without any specialization, to the regime of criminal liability of legal persons provided for in general in arts. 31 bis et seq. of the Spanish Criminal Code. In particular, this unreserved extension presents a series of problematic aspects that fall, precisely, on one of the cornerstones of the criminal responsibility system of political parties: the system of penalties. That is why in this paper we analyze, in the first place, from an eminently practical perspective, the different penalties that can be imposed on a political party. Secondly, we will proceed to examine the constitutionality of these and, finally, we will focus on the controversial criteria of application of the penalties contemplated in art. 66 bis of the Spanish Criminal Code.

KEY WORDS

Political parties, criminal liability, legal entities, penalties, unconstitutional, application criteria.

INTERPRETATION AND CONSTRUCTION OF THE LAW

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ABSTRACT

The terms «interpretation» and «construction» pertaining the Law are understood and used in various ways among jurists; and this divergence is sometimes rooted in a different legal conception. This paper deals in particular with a fairly new disagreement in legal theory, which confronts those who think of law as a process with those who see it as a product. The so-called «interpretive theory» of law challenges the common doctrinal assumptions among lawyers, according to which the Law is the object of interpretation, and not its result; but doing so it undermines the claim that the purpose of interpretation is to declare the Law. Instead, it is argued that interpreting the Law is to attribute meaning to its sources, either only with linguistic keys or also with other kind of arguments; and that to construe the Law is to give it content that it did not have, either by creating new norms authoritatively or by correcting existing ones.

KEY WORDS

Interpretation, construction, argumentation, development.

STREET DEMOCRACY

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ABSTRACT

In this text, one of the most extended (at least in Spain and Europe) version of democracy is examined. This is the street democracy. At first sight this is understood as a sociopolitical behavior (and also cultural) of a direct, pacific or violent, acceptance of the power by the people (from here the «democracy»), done or attempted at public spaces (from here the «street») through crowded demonstrations, apparently without a visible organization, either without leaders, nor formal structures. This notion is opposed to the representative democracy. This is why there is a reference to the last one and its shortages, what explains the appearance of the former one as a counterpoint.

KEY WORDS

Representative democracy, street democracy, governance, governed, critical citizenship.