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Artículos Científicos

¿Impera la política sobre el derecho? Ciencia política y estado de derecho en la obra de Guillermo O'Donnell

Does politics prevail over law? Political science and rule of law in the work of Guillermo O'Donnell

A política da lei prevalece? Ciência política e estado de direito na obra de Guillermo O'Donnell

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Resumen

El pensamiento de Guillermo O'Donnell ha sido fundamental para entender los procesos democratizadores y posdemocratizadores en América Latina, pues su enfoque metodológico introdujo conceptos analíticamente pertinentes y heurísticamente fructíferos. El objetivo del presente ensayo es dar cuenta de la importancia en su obra del vínculo metódico entre derecho y ciencia política, a través del análisis de la interrelación disciplinar del concepto *estado de derecho* junto con otros íntimamente relacionados, como *Estado*, *legalidad*, *imperio de la ley*, *ciudadanía*, *democracia* y *rendición de cuentas*, y de su vigencia en la realidad política actual. A partir de la utilización del método analítico conceptual, se encontró que dicho entrelazamiento permea el conjunto de su obra, lo que le permitió hacer una lectura conceptual innovadora que reivindica la importancia de la ley y el papel activo ejercido por



la interacción del binomio orden legal y orden político en procesos democratizadores que no se ajustan a los supuestos del modelo clásico de la ciencia política.

Palabras clave: imperio de la ley, ciencia política, democracia, América Latina, Guillermo O'Donnell.

Abstract

The thought of Guillermo O'Donnell has been instrumental in understanding the democratizing and post-democratizing processes in Latin America, its methodological approach introduced analytically pertinent and heuristically fruitful concepts. The objective of this essay seeks to account for the importance in his work of the methodical link between law and political science, through the analysis of the disciplinary interrelation of the concept of rule of law together with others intimately related to that as state, legality, rule of law, citizenship, democracy and accountability, as well as its validity in the current political reality. From the use of the conceptual analytical method, it was found that such entanglement permeates the whole of his work, which allowed him to make an innovative conceptual reading that claims the importance of the law and the active role exerted by the interaction of the political and legal order binomial, in democratizing processes that do not conform to the assumptions of the classical model of political science.

Keywords: rule of law, political science, democracy, Latin America, Guillermo O'Donnell.

Resumo

O pensamento de Guillermo O'Donnell tem sido fundamental para a compreensão dos processos de democratização e pós-democratização na América Latina, pois sua abordagem metodológica introduziu conceitos analiticamente relevantes e heurísticamente frutíferos. O objetivo deste ensaio é explicar a importância, em seu trabalho, da ligação metódica entre direito e ciência política, através da análise da inter-relação disciplinar do conceito de estado de direito, juntamente com outros intimamente relacionados, como Estado, legalidade, império da direito, cidadania, democracia e responsabilidade, e sua validade na realidade política atual. A partir do uso do método analítico conceitual, verificou-se que esse emaranhado permeia todo o seu trabalho, o que lhe permitiu fazer uma leitura conceitual



inovadora que reivindica a importância da lei e o papel ativo exercido pela interação do binômio da ordem jurídica e ordem política nos processos de democratização que não estão de acordo com os pressupostos do modelo clássico de ciência política.

Palavras-chave: estado de direito, ciência política, democracia, América Latina, Guillermo O'Donnell.

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Introduction

A well-known 19th century lawyer and philosopher said that individuals build their history from specific circumstances that are not the product of their choice (Marx, 2003). This results in a great variability of starting conditions, of historical, social and cultural anchors, which lead to high versatility in the different responses given by social actors both personally and collectively. There is, therefore, a permanent asymmetric dynamic between social fabric and personal elective options. The work at hand exemplifies it fully.

Guillermo O'Donnell is, without a doubt, one of the most important social scientists and the most influential and recognized political scientist in Latin America in the last half century (Duque, 2018). His work as a teacher, researcher, advisor, consultant and intellectual in political science is unparalleled south of the Rio Grande (Bulcourf, 2012). In fact, his work not only contributed to academic progress in the political discussion (particularly of Latin American reality), but also represented a decisive boost to the consolidation and disciplinary institutionalization of the region (D'Alessandro, 2016).

His contributions range from theory, methodology, conceptualization and empirical measurement to the exemplary teaching of always doing it from a necessarily critical and ethically based perspective, a position from which the analysis of Latin American political phenomena should be undertaken (Nieto and Milanese, 2016).

In this direction, it is based on the hypothesis that there is an intellectual biographical component that leads the aforementioned author to a rethinking of the disciplinary relationship between law and political science, which in turn will lead him to rethink fundamental concepts such as State, society, democracy, rule of law and citizenship,



necessary to understand the democratizing and post-democratizing processes in Latin America.

Noting the above, in this paper three objectives have been set: first, to demonstrate and dimension the scope and academic influence today of the contributions mentioned above. Secondly, to highlight the temporal context and the way in which these contributions were conceived in response to specific historical, intellectual and personal circumstances and, thirdly, to examine the way in which O'Donnell methodologically articulates political science and law through concept democratic state of law, as well as its political and intellectual relevance in Latin America.

Political science, law and biography

The use of an analytical-conceptual methodological perspective shows us that Guillermo O'Donnell's intellectual biography is closely related to two issues that obsessed him: the socio-political development of his country (Argentina) and Latin America in general, in a political environment marked by the predominance of numerous authoritarian regimes. In addition, it would be difficult to understand it without also referring to the disciplinary development of social sciences and, in particular, of political science and law in the region.

It will not be until the second decade of the last century that a pioneering doctorate in political science is created in Argentina, whose perspective focused on the study of the different branches of law (especially public and international law), instead of political science. Strictly speaking It is also illustrative that the faculties of law were then called law and social sciences, without implying a close academic interrelation between one and the other (De Sierra, Garretón, Murmis, Trindade, 2007), a situation that he would soon experience in his own flesh the future lawyer and budding political scientist.

O'Donnell entered the University of Buenos Aires at the age of 16, precisely at the Faculty of Law and Social Sciences. The reason for this election, in his own words, was the following:



In those days it was the closest career to the study of politics. In the fifties and sixties there was no department of political science in Argentina. In the Faculty of Law there was something called Political Law and Constitutional Law, which was the most linked that I found with political science. Also, being a lawyer offered me a chance to make a living. That's why I got involved in Law (Munck, 2016, párr. 6).

His opinion on the Faculty was not very flattering, as it seemed "boring." From a very early date they begin to show the way and the particularities in which law and political science will be articulated in their formation and in their thinking. First, a continuous and fruitful coming and going of the right to political science and vice versa over time. Second, a methodological skepticism about the legal formalisms that characterized then the learning of legal science in Argentina, accompanied by an open predilection for the empirical study of political and social phenomena. Third, the need to carry out comparative exercises that will allow a better understanding of the specificity of the political and social problems to be investigated, beyond theoretical schemes limited to "formalist" or a priori visions. And fourth, the importance of taking advantage of the heuristic advantage of valuing the theory as a sort of Weberian ideal type that does not exhaust the empirical "deviations" of reality, but allows it to be better understood by comparison or contrast with a previously defined model.

At this stage of his life, O'Donnell puts land in between with respect to his recent past in the study of law; One way to do this will be to study a postgraduate abroad, specifically political science at Yale University (United States), where at that time the development of the discipline was oriented (behaviorism) "against the kind of comparative studies of constitutionalists that I He had suffered at the Law School "(Munck, 2016, para. 8). Over the years he will retrospectively recognize, however, the need to return to his disciplinary origins:

I agreed with the criticism that the formalism was sterile and boring. Much later I discovered that I had to return to my legal side, although without thinking at all that the legal theory ends with Thomas Aquinas or Kelsen (Munck, 2016, párr. 8).



In Yale, he had close contact with leading political science specialists, such as Robert Dahl, David Apter, Juan Linz and Charles Lindblom, among others, who would complete their training as a political scientist and leave a mark on their thinking and subsequent work thanks to dialogue and the critical appropriation of their ideas. He also deepened his knowledge of classic authors such as Max Weber (another prominent lawyer and student of politics and society), from whom he will learn the importance of locating the spatio-temporal coordinates and the theoretical-methodological rigor necessary to address social phenomena. He also became familiar with models of political analysis then novel, such as that of rational choice, which would eventually become an important input for the manufacture of concepts and categories for the study of democracy in Latin America.

Despite everything that his postgraduate education at Yale meant for his political training and the course his subsequent research work would take, the interrelation between political science and law would have to be a constant in his intellectual development. It becomes increasingly skeptical, the same of universalist theories too general as of deterministic cultural theories, where they turn their heads find homogeneous historical trends.

Illustrative of such a conception is the model chosen as a critical response to these approaches that I would use extensively in the work on Transitions from an authoritarian government: “I found the assumption of rationality attractive - that people usually pursue the goals they believe are good for them - partly as a result of my training as a lawyer” (Munck, 2016, para. 37).

An express question of who were the classic authors he read and who always returned in search of inspiration, he quotes two training lawyers: the young Marx and Max Weber, as well as a cluster of prominent law scholars among which stand out Joseph Raz, Jeremy Waldron, Ernesto Garzón Valdéz y Bruce Ackerman (Munck, 2016).

After his return to Argentina and towards the end of his life, O'Donnell received a sense and deserved full homage of symbolism at the National University of San Luis. On March 12, 2010, the Universia portal reported that in the Faculty of Engineering and Economic-Social Sciences he was awarded the honorary doctorate, followed by a keynote lecture as an inaugural act of the teaching of legal careers at the university: law, attorney and legal assistance technician (Dr. Guillermo O'Donnell was distinguished by UNSL, March 12,



2010, para. 2). His masterly dissertation returns once again to the topic at hand. It supports the following:

Regarding the birth of political science, he explained: “It was based on a divorce that, unfortunately, I think we have paid dearly. Contemporary political science in its different versions, especially Anglo-Saxon, but also in France and by the way in the beginning in Argentina, was born as a reaction against legal science” (Trocello, 2012, pp. 33-34).

Lines later reaffirms categorically the importance that this relationship had had in his personal and intellectual biography.

He said he had also been captured by that division, but then, when he studied the democratization processes, he confessed that he rediscovered the law. He expressed that he returned to study, that he read to other authors, studied contemporary constitutions; and as a consequence, he quickly became convinced that “one cannot think of democracy, and certainly not the state, without having as a fundamental dimension of both: law and law”. He stressed that - although it seems obvious to some - democracy, or the state, cannot be understood “without taking law and law very seriously” (Trocello, 2012, p. 34).

At the end of his keynote address, O'Donnell calls for reconciliation between political science and the right to end disciplinary and methodological distancing, founded, on the one hand, on the fact that the construction of a genuinely democratic State It is everyone's responsibility, but “especially the present and future jurists” (Trocello, 2012, p. 36). On the other, it reminds us of the intrinsic relationship that exists between political regime and law, which leads us to the conclusion that the effort for democracy constitutes at the same time a struggle for law; even more: the construction of a democratic citizenship is continually expanding citizen rights, be they civil, political or social; rights that, he reminds us, only exist as long as they have legal recognition and personality. The existence and quality of democratic regimes are necessarily linked to the validity and quality of a state of democratic law, which in turn depends on the effectiveness of its legal system (Trocello, 2012).

With these words, O'Donnell establishes an agenda of investigation of the problems to come to the newly created Latin American polyarchies: the historical weakness of the State



in the region, the specific historical character of its articulation with society, the critical role of the law in both cases, the always recurring fragility of the rule of law, the tortuous process of building citizenship and the political consequences in the case of newly established democratic systems. He ends his participation by posing a challenge to future generations of lawyers and political scientists who realize the close relationship between political science and law, both in his work and in his thinking and personal biography.

That the divorce is over, that political scientists really learn a lot from legal science, that jurists accept our knowledge of certain realities of the practice of power, which sometimes escapes the formulation of legal texts or jurisprudential speeches (Trocello, 2012, p. 37).

State, society and law

The first point of your research agenda is the State issue, specifically the construction of a democratic State. In an interview given in 2009 to two students of the Regional Center of the International Association of Students of Political Science, to the question “Why do you consider political science important?”, O'Donnell replies that it is important because it deals with relationships of power and because political scientists are "responsible for the critical study of power" (Incio, Marzonetto, 2017). This statement is fundamental, as it represents the starting point for understanding the way in which law and political science interrelate in the conception that Guillermo O'Donnell has of the State, society and law.

In a work published in the last third of the seventies of the twentieth century, O'Donnell already addressed this crucial issue. There he proposes an early definition of the State from a close approach to Marxism that emphasizes power and political domination as its fundamental ingredients:

I understand by State the specifically political component of domination in a territorially delimited society. By domination (or power) I understand the ability, current and potential, to regularly impose the will on others, even but not necessarily, against their resistance (O'Donnell, 1978, p. 1158).



He also says that domination is a relational fact, a way of connecting social actors. This observation is decisive. For O'Donnell, even at this stage of the development of his thinking, the State does not admit an exclusively political definition. From here it follows a whole series of ideas and arguments that link the notions of society, State and law, which reveals the constant presence of a virtuous circle whose dynamics have political science in one of its extremes and in the other to right.

Unlike those who, from a more political or neo-Marxist perspective, defended the idea that the State was basically a unitary actor, a foreign entity, impervious to society, O'Donnell asserts, on the contrary, that it is a constitutive part of the fabric of the social relations and that this is its fundamental characteristic, so much that all the others depend on it (O'Donnell, 1978). However, a distinctive feature of capitalism is precisely the (apparent) division between society and the State, which will give rise to the great dichotomy between the public (the State) and the private (civil society).

In this regard, he argues: "This is another level in which the law is of fundamental importance" (O'Donnell, 1978, p. 1173). With its characteristic lucidity, O'Donnell is ahead of authors who from a more anthropological perspective will emphasize the importance of cultural and relational factors, which - like O'Donnell - will affirm that the State is part of society and that It is not the only instance where rules are created that regulate the social relations of individuals (Migdal, 2011).

If the State is not alien to society, but is an intrinsic part of it, the right becomes the objectification of this division, the closing of the apparent exteriority of the State with respect to society, of politics in relation to the economy . Once the domination is diluted, what remains is a legal order in which formal equality predominates and which can be appealed when it is intended to be overlooked. The conception and practice of modern law - defined as rational-formal by Weber - is born and developed with capitalism and serves as an instrument to codify such domination. At the same time, however, something momentous happens:

By crystallizing the planes that correspond to the sphere of circulation and making them predictable as beams of rights and obligations, law is also an organizing fabric of society and of the domination that articulates it (O'Donnell, 1978, p. 172).



In other words, society and the State are in a relationship of “structural complicity”, taking into account that it is the State that organizes the reproduction of that, in the first place as a right, that is, guaranteeing formal equality, private property and routine administration, which is nothing but the daily application of legal norms; subsequently, as equal political rights in the electoral field. There is, therefore, a sharp dividing line between politics and society, but its fusion through law.

In a later text he refines and specifies his definition of State. Now it includes “a set of institutions and social relations” (O'Donnell, 2003, p. 2) that are synthesized in three dimensions that will later be expanded to four: the first includes the system or set of public institutions that comprise it, is say, its different bureaucracies; the second, the legal system, is nothing but the fabric of legally valid rules that determine and channel the different types of social relations, and the third, as a result of the foregoing, its claim to become the privileged space for the construction of collective identity of a society as a nation; Finally, there is its filter or valve function that regulates the degree of closure or opening, thus defining what is left inside or outside its borders, particularly with regard to its territory and population.

O'Donnell insists that the State is not in a zero-sum relationship with society; on the other hand, it is intimately imbricated with it in each and every one of these dimensions, be it through the effectiveness of its bureaucracies, the effectiveness of its legal system, the degree or credibility with which the population accepts it as the articulating axis of identity and the common good of the nation, as well as the strength of its role as regulator or filter of what properly defines its character as nation-state.

A first conclusion of the above is that there is a great historical and empirical variability of the strength of the State in the different dimensions that make it up. Its presence or absence cannot be predetermined a priori, as it is contingent and therefore subject to empirical research. This is important because, given its close relationship with society, O'Donnell attaches great importance to the role of the State in the democratization of Latin American countries (O'Donnell, 2003). Second and crucial consequence: the increasingly important role that law will play in its multidimensional conception of the State.



A movement that goes from power and domination to a conception where there is a mutual co-determination between State and society mediated by law becomes increasingly evident in his thinking. This is because, in addition to the expropriation of the means of production from the producers, O'Donnell is especially interested in the role of the State in the expropriation of the means of legality. Together with domination and power, the role of law will be increasingly decisive, since relations of domination are not only economic. To such a degree it is so that in the origin of the written law there were social impulses both from above and from below (O'Donnell, 2003), processes that over time would lead not only to the normative self-regulation of the internal functioning of State institutions, but to the externalization of its legality to the fabric of social relations. From that moment the right will no longer flow from the local communities; now he will do it from the center: "The State expresses itself in the grammar of law" (O'Donnell, 2003, p. 3).

It is clear that the State is one of the issues that will obsess O'Donnell throughout his life. From its origins, the State always appears linked to power, domination and law. States have their own archeology, their historical routes of construction, reconstruction and destruction. Their analysis requires collaboration between disciplines, particularly political science and law; interweaving between the two not formalistic or legalistic, but deeply empirical and dynamic. As a good political scientist, O'Donnell never loses sight of the struggle for power and domination; at the same time, as a good lawyer, he does not neglect or underestimate the importance of the law in the functioning of both institutions and social actors.

From the problems he lived and decided to face in analytical terms, it is possible to distinguish two phases in the evolution of his thinking on this subject (Cardozo, 2012): a first period in which his interest revolves around the authoritarianism of the State and the nature of its relations with society; subsequently, a second stage where his concern shifts towards the particular characteristics of the State in Latin America and its effects on democratization and the quality of democracies in the region. The link between State, citizenship and democratization becomes key at this stage, analyzes the political regimes after the democratic transition, incorporating in its methodological perspective the central role that law plays in this circumstance.



Unlike the relationship State and economy, the democracy and state link has been little studied (O'Donnell, 2008). Very often it is considered a simple context that can facilitate or hinder the functioning of the market or an exogenous factor to democracy, an exclusive attribute of the political regime. He is often seen only as the guarantor of a small number of rights, property, security and political, mainly, putting aside the principle that other rights are equally important for the development of a political regime and a democratic society such as civil, social and cultural (O'Donnell, 2008). In disagreement, the Argentine lawyer and political scientist affirms that a crucial challenge for the new polyarchies was and is to build a State for and for democracy.

The State is a complex entity, since its appearance is kaleidoscopic. In its dimension of identity factor and collective cohesion, the representative of the common good and / or public good is nothing but the nation, and this has an interrelation with democracy that (prevents us) had been neglected by political science and sociology historical, who preferred to visualize him as a unitary actor who always presents his most solemn face. Anthropology, on the other hand, took a different path, denied its unity considering it apparent and concentrated on an atomized perspective, which privileges the study of its microsocial reality.

O'Donnell proposes another way of looking at it. Modern states are multidimensional nation-states. And at least in the "north-western quadrant" and in Latin America they are the political, legal, historical and cultural factor where democracy emerged. It summarizes conclusively that the nation is the cultural basis of the constitutional state (O'Donnell, 2002). Therefore, citizens always have two faces. One looks to the right, it is a legal status that is obtained by the mere fact of being part of a nation-state; the other sees politics and is the result of social struggles to expand the border of rights in force until that moment. Similar to the classic formulation of Marshall that goes from the protection to the freedom and security of the individuals to the participation in the exercise of the political power, and from there to the access to satisfactory material and cultural (Tilly, 2004), but not only.

The State is of vital importance for democracy because it represents the point where the citizenship rights that a democratic regime implies and demands are anchored. Here is another example of how O'Donnell relates politics and law, since the legal component of citizenship had traditionally been undervalued: it looked like a legal-formal shell empty of social-real content. O'Donnell, on the other hand, considers that the law, in intimate



relationship with politics, is a fundamental aspect of the struggle for democratization for at least two reasons.

First, because the State in its legal system dimension is not outside, but is at the very heart of society through normative regulation; at the macro level of the institutions and bureaucracies that form the first level of the State, at the micro level of the sociopolitical and legal actions and exchanges of the individuals that shape those. The legal system or legality is the fabric that unites the different parts that comprise it. It warns, however, of the temptation of an overly legalistic interpretation underlining that this dimension does not constitute the entire State. In his work he reiterates that the State is the repository towards which collective struggles converge for the recognition and expansion of citizenship rights in force at a certain historical moment. Rights that, it is important to underline, are legal rights (O'Donnell, 2008a). Second, because it is much more likely that a democratic State will promote and guarantee not only political-electoral rights, but also civil and social rights, while extending the border of territorial and social expansion of other possible citizenship rights.

Rule of law, rule of law and democracy

Central to the theorization that fuses politics and law in the thinking of Guillermo O'Donnell must be the concept of the rule of law, which nourishes its roots in philosophy, the culture of the Enlightenment and the liberal legal and political tradition. It also highlights the constant tension between both concepts that is expressed in the various ways of approaching their understanding, and reveals the need to address it from a methodological perspective that goes beyond the traditional disciplines of political science and law.

The notion of rule of law has generated a huge discussion and not a few confusion. Without entering into the particularities of its historical, social, political and legal evolution, the concept rests on two basic assumptions: it is necessary to limit the power of the State and the government through the law; In addition, it is imperative to protect and guarantee a set of individual rights and freedoms considered fundamental (Rodríguez, 2016). There is a political and ideological conflict here about how to conceive the functioning of the State, society and the limits to the performance of both. The notion of the rule of law appears as the



political and legal response of liberalism to the risks posed by an absolutist State without limits to the exercise of its power. From their perspective, the economic and social optimum is achieved when the State, far from actively intervening in these areas, limits itself to “negatively” protecting the elementary rights of the citizen, that is, his life, physical integrity and private property.

The legal concretion of the liberal principles of the rule of law will become the Anglo-Saxon legal tradition in Rule of Law or “rule of law”, an expression that in synthetic terms implies the fulfillment of at least four elementary legal conditions (Laporta, 2002) : first, the authority that issues standards must be empowered by a prior rule for it; second, legal norms must be general and their application egalitarian; third, the law must be prospective and not retroactive; and fourth, the rules must be public and clear.

To this we should add two political conditions: the existence of a divided power or separation of powers and the existence of an independent judiciary. The idea of rule of law, rule of law or rule of law thus constitutes a series of legal variations with respect to the previous political concept of limited government. For that reason, even though the scope of application of this concept in practical terms is fundamentally legal, it has tended to limit its understanding to the strict sphere of law (Rodríguez, 2016).

An example of this is the gradual process of constitutionalization of modern legal systems that provide the normative-institutional scenario that makes the operation of the rule of law possible. While from the perspective of law the Magna Carta is the supreme law and source of the rest of the current legal regulations, from the political point of view the Constitution is a social and political agreement that is legally expressed in a set of principles, rules and values socially shared, which is configured as a cultural and historical heritage of a specific community (Rodríguez, 2016). The elementary legal principle of the Rule of Law is the subordination of state policy or power to law; The primary political principle lies in the fact that the constitutional norm derives from the decision and sovereignty of the majority of the members of that particular community, whose denomination passes from subject to citizen. In other words, "the law is a politicized phenomenon ... But this relationship with politics lies not only in its origin, but also in the consequences it generates" (Rodríguez, 2016, p. 57).



The rule of law is the legal expression of legitimacy in a specific society where the exercise of political power is carried out according to general and abstract norms, and where, therefore, the claim of legitimacy is based on the legality of the legal order and existing social, which in turn is only capable of producing legitimacy if we assume as a precedent condition the legitimacy of that legal order. That is, O'Donnell considers that the role of citizens in the operation, recognition, validity and effectiveness of a legal system is decisive (O'Donnell, 1993).

It is clear that the concept of the rule of law is historical, polysemic and even "heterogeneous", it all depends on the source that has been consulted and the perspective assumed. Therefore, it is important to recognize - a prominent American jurist maintains - "the validity or importance of many of the principles that may derive from the fundamental idea of the rule of law depends on the particular circumstances of different societies" (Raz, 2002, p. twenty).

Consequently, some authors consider the existence of different historical varieties of it: Liberal State of Law, Social State of Law and Democratic State of Law (Díaz, 2002), the latter conceived as "the particular form of legal-political institutionalization of democracy" (Díaz, 2002, p. 67). This political order includes among its central components not only the law, but also the State, society and the economy, which can assume different configurations and relationships between them depending on the type of political and social system in question.

O'Donnell moves the axis of discussion on the concept towards a greater interrelation between politics and law. The object of their attention and analysis shifts with the change in political conditions at international level and particularly in Latin America. The transition from authoritarianism to democratic political regimes will bring new topics of interest (citizenship, rule of law and accountability among others) that will be added to the issues that had obsessed him throughout his academic career (State, authoritarianism, society-state articulation), always in the context of finding an answer to the reasons why Latin America had encountered obstacles that hindered its route to democratization according to the classical model of Western democracies. New realities demand new concepts, and O'Donnell will show a special expertise when "naming the beasts" (Bulcourf, 2012, p. 136).



The third democratizing wave in Latin America soon revealed the challenges and problems that the subcontinent would have to face after his access to the club of countries with democratic systems. O'Donnell would soon exercise a democratic critique of democracy really existing in the region. A first problem will emerge in the new scenario. On the one hand, democratization does not only go through the political regime, but encompasses a set of institutions and social and legal conditions that go beyond it. On the other, the activation of the full exercise of political-electoral rights does not exhaust the spectrum of activation and exercise of other rights equally important to citizens, such as civil and social rights. And that brings us back to the concept of rule of law. Without this, the validity and guarantee of political freedoms and civil rights can be threatened in a wide range of ways.

O'Donnell first offers us a definition, very necessary when it comes to such an elusive concept. In its original sense, the rule of law is an eminently legal notion, which addresses the characteristics that the law must have to be considered legitimate: it must be promulgated by a competent authority, its approval must be public, its prospective time horizon and non-retrospective and, finally, its application must be equitable and egalitarian by the judiciary, as well as by state institutions.

In this initial formulation it is clear that there is no relationship of mutual interdependence between the rule of law and democracy; as one prominent jurist states, “a State with right (all or almost all) is not, without more, a State of law (only some)” (Díaz, 2002, p. 64) That is, they can exist - and in fact there have been - politically authoritarian regimes, endowed with a legal order in both institutional and normative terms, that would approve the denomination of rule of law without problem.

It is necessary to specify then the nature of its link with a democratic regime. Here is another example of how O'Donnell associates almost artistically politics and law. If in its genesis the concept of the rule of law is a legal notion when it speaks of a democratic state of law, it is necessary to establish a bridge with society and politics as a whole. On the basis of this consideration, it is clear that even if in the Anglo-Saxon tradition the rule of law refers above all to the courts and the legal system, a democratic state of law cannot and should not be limited to one or the other (O'Donnell, 2005). On the contrary, a genuinely democratic State assumes that the legal system preserves and defends civil and social rights, as well as



political freedoms. In addition, all public and private actors and institutions must be subject to the control of the legality of their actions and to accountability and accountability mechanisms (O'Donnell, 2001).

These mechanisms correspond to three different types of accountability and accountability: a) electoral vertical, the ability of citizens to change through their vote to parties or politicians in power; b) social vertical, the ability to undertake actions carried out by groups or individuals, who bring legal remedies against the government and the State for alleged illegal actions or omissions of public servants, and c) horizontal, the capacity of state agencies or institutions responsible for sanctioning the illegal actions or omissions of public servants (O'Donnell, 2005). The first is a theoretically "innate" characteristic of a democratic regime, while the second and third vary depending on specific circumstances such as the tradition, culture and history of each country.

Democracy is not, therefore, just a political issue, an exclusive issue of the institutional attributes of political regimes, since it also includes the law, the legal face of the State that is embodied in a particular State-society and State-citizenship articulation. From this analysis scheme emerges a dynamic conception of the democratic state of law.

Reluctant to static visions, O'Donnell's perspective emphasizes its irregular and uncertain character. Social transformations, the struggle for the expansion of new rights, the preservation of those already conquered (which cannot be definitively taken for granted) and their effective application outline a changing horizon rather than in a fixed and constant reality (O'Donnell, 2001a).

Rule of law, citizenship and law

If democracy is not restricted to the functioning of its political-electoral institutions, then it is necessary to analyze carefully from its historical particularities the complex interrelationships between State, society and citizenship, as well as the various ways in which they influence and the different forms they assume in a democratic regime. From the above it is inferred that the State is much more than what appears at first sight: its institutional framework and all its bureaucracies. On the contrary, the State is, as we saw before, a set of social relations where a certain legal order predominates. That is, O'Donnell speaks of the



legal dimension instituted by the State, where the law is not only a formal fact, but a tangled fabric that engages social, political, economic, historical and cultural attributes of relations between individuals and citizens (O'Donnell, 1993).

In this conception, the democratic state of law - that is, the rule of law of a democratic political regime - assumes specific characteristics in its relation to citizenship and the rule of law. For O'Donnell, the historical evolution of citizenship is not conceived in a linear manner or privileges political-electoral rights. In the same way, when it defines the effectiveness of the rule of law, it does so by considering it an intermediate, heterogeneous and dynamic zone, which influences and is influenced both by the institutional political order and by the socio-economic specificities of each national reality (O'Donnell, 2002); in other words, the level or degree of extension and development of civil and political citizenship.

In this regard, a fundamental legal consequence stands out: the notion of a democratic state of law brings with it the gradual extension of formal equality to all social sectors of a political community, established through legal norms that sanction universal rights and obligations, that is, valid for all individuals of that collective without distinctions of any kind. For O'Donnell, obtaining such formal equality constitutes an inconsequential fact. We do not have to look far to find the reason for its importance. The citizenship of modern democracies rests on the conquest or legal attribution of various types of rights, according to the classic scheme of the English case (Marshall, 1998), gradually evolves from civil rights to political rights and finally to social rights.

However, the conquest and expansion of citizen rights is one side of the coin. The other has to do with the effectiveness of the law, the State-in-both-law. In O'Donnell's perspective, the ultimate justification for a democratic state of law is given by the answer to these questions: if it exists formally, does it apply or does it not apply? How does it apply? Where does it apply? (O'Donnell, 1993). In summary, what is the degree of territorial and functional homogeneity of the legal and social order represented by the State? This brings us to another equally important issue: the principle of formal equality before the law (the effectiveness of the principle of legality of a democratic State).

The reality of the Latin American democracies of recent transition took a different trajectory from that of the classical model of the northwestern quadrant and posed a whole series of practical and methodological challenges and challenges. The historical progression of the



acquisition of citizen rights did not follow the same sequence everywhere (for example, political rights and social rights were achieved almost simultaneously in Mexico). In most nation-states there was a great territorial and functional heterogeneity of the principle of effectiveness of the law.

Therefore, the news of O'Donnell's proposals are especially relevant in Mexico, where the situation has worsened in recent years with the exponential growth of organized crime, criminal violence and the proliferation of femicides, intensifying an ongoing process. of creation and consolidation of local power spaces, a growing deterritorialization of the exercise of the monopoly of the legitimate violence of the State and the loss or privatization of urban public spaces (Knight, 2012).

In the new Latin American democracies the issue of the rule of law became a matter of fundamental interest. It brought to the forefront of the discussion whether the democratization and democraticness of a political regime did not also go through a relatively neglected aspect up to that point: the legal dimension of the State, that is, the degree of effectiveness of the rule of law and the type of legality of a democratic order (Villafuerte, 2007). Here again appears the connection between political science and law in O'Donnell's thinking. A democratic legal order is based on the fact that all citizens are equal before the law and bearers of potentially expandable legal rights. Therefore, the principle of legality of a democratic order is part of a whole (it is not incomplete as in an authoritarian system), and the mechanism that activates it is political: social change and the struggle and demand for citizen rights (O'Donnell, 2008b).

However, the extension of the law has not been nor is it homogeneous in the territory or equitable in its application. The ideal of universal political and civil citizenship has not been achieved anywhere, not even in the oldest really existing democracies, warns O'Donnell. Paraphrasing Popper, it could be said that like science, his search has no end. The consequence is the persistence and dissemination of what O'Donnell calls "brown areas and low intensity citizenship" (O'Donnell, 1993). These obscure areas are territorial spaces where the State is not able to fully enforce its legal order, territories where political rights are exercised, although not civil or social rights, which forms a complex scenario in which they intermingle and articulate democratic attributes and dimensions with other non-democratic (authoritarian). The fact that equality before the law is restricted in practice to dimensions



not only directly related to the exercise of political-electoral rights makes clear the importance of "other" rights as an essential and constitutive part of a democratic regime. Once again the intimate link and importance that politics and law have in their thinking is manifested in O'Donnell (O'Donnell, 2002, p. 25).

Discussion

Limitations

Throughout this work, different aspects of the thinking of Guillermo O'Donnell, the most important and cited Argentine political scientist of the last fifty years in the analysis and discussion of democracy in Latin America, have been presented. It is essential, therefore, to point out the limitations of the text in relation to the object of study addressed. A first important point has to do with the scope of the study. The volume of its academic production is vast and includes, as we have seen, from the analysis of the State (one of its favorite subjects) to its specific relationship with civil society, the role that the law plays in that historical articulation, its effects on the construction and democratic consolidation and the importance of the growing role of citizens as a dynamic factor in the expansion of the border of their civil, political and social rights.

However, here only a part of his work is exposed, that related to the analysis of the State, its theorization and operation in specific historical conditions such as those of Mexico and Latin America, characteristics that determine its historical weakness and the difficulties that this implies for the establishment of a democratic political regime (Cardozo, 2012). It proposes a non-linear, but multidimensional definition, which includes, in addition to institutional aspects, others such as cultural, territorial and legal aspects.

Once the limits and the purpose of the work have been established, it is necessary to emphasize that here we deal preferentially with this last dimension in its interrelation with the others. In addition, although O'Donnell's thinking shows extraordinary thematic and conceptual continuity, a second limitation of this text is that he focuses his attention on a specific stage of his personal intellectual development, the one in which his primary interest passes from the study from the authoritarian State to the examination of the relationship



between State and democracy in Latin America, specifically the type of state organization that requires a democratic political order (Bulcourf and Reina, 2009).

Finally, this work revolves around a particular issue that worried O'Donnell at the end of his life: the link between political science and law, visible in the abandonment of a concept of state almost exclusively focused on the political regime to another where the State is conceived as a legal system (O'Donnell, 2001b). This situation would lead him to analyze and rethink in his latest works the concept of the rule of law, a novel perspective that is crucial to examine and understand the functioning of Latin American democracies.

Weaknesses

O'Donnell's research agenda in recent years was dominated by the issues that occupied him throughout his life: State, democracy, citizenship and law, as well as the relationships and interrelationships between them. Throughout his intellectual and academic career, a constant was his intention to elaborate conceptual instruments that allowed us to rethink the Latin American reality from its own specificity. This led to a continuous dialogue with other colleagues, which gave rise to fruitful debates and discussions about their proposals for reading and political interpretation of Latin American reality (Peruzzoti and Smulovitz, 2002).

However, that trajectory has a winding course. Although a growing number of works have focused on the progressive importance of the judiciary and transitional justice in democratizing processes in Latin America and other latitudes (Ansolabehere, 2007; Garzón, 2003; Ibarra, 2006), a weakness of this document was given by the difficulty of finding empirical research on the specific subject of the study that will make it possible to deepen the analysis and knowledge of this problem from the theoretical-methodological proposal of O'Donnell.

In the same direction, several problems noted or suggested by O'Donnell's fruitful work, pending or insufficiently developed as another weakness, could be grouped, which required additional efforts to refine the structure and analytical approach of the text. Among others, the need for a greater conceptual exploration of the relationship between State, law and citizenship in political systems of recent democratization can be enumerated; few



published works that connect the issue of low-intensity citizenship and the extension of “brown areas” with the progressive upward spiral of insecurity and violence in several Latin American countries, and, finally, a balance still pending: writing development stories of the State and its articulation with society in Mexico and Latin America from O'Donnell's perspective.

Strengths

The contributions and contributions of Guillermo O'Donnell to the study of the State, democracy, citizenship, political science and law are varied, numerous and provocative. Many of his coined concepts (e.g., bureaucratic-authoritarian state, delegative democracy, horizontal accountability, low-intensity citizenship and democratic rule of law) became a common currency, so they were widely discussed in America Latin and other latitudes, the same in academic circles as politicians.

The range of their contributions ranges from theory to methodology, empirical research, the construction and consolidation of academic institutions and the promotion of an open, critical and informed dialogue. As we saw lines above, a first fortress that runs transversely throughout its texts prevents us from incurring an excessive theoretical, conceptual or methodological generalization when approaching to investigate the political or social reality in question. This allows him to point out, for example, the limitations of a theory of the State circumscribed to the effectiveness of its institutions or the efficiency of its system of laws, problematizing instead its functional penetration at different territorial scales (Berdondini, 2012).

As a result, a second strength is given, as we saw before, by the tendency to ignore the specific historical characteristics of the object of study that make it a particular case, as well as the need to use a comparative methodology to help specify the characteristics. typical of the phenomenon in question. In the analysis of the transformation and interrelation of disciplines such as political science and law, of concepts such as State, democracy, citizenship or rule of law, O'Donnell continually reminds us of the absence of replicable historical trajectories regardless of the specific specificities of The reality in question.



In the final account of strengths it is particularly important to underline a fundamental one. O'Donnell was exemplary not only in his work, but also in his personal biography. In addition to the intimate connection between the two, to establish a research agenda in Latin American political science in force today, he was always open to discuss his views; He taught, by leading by example, the importance of studying and having an informed, critical, congruent and humanist view of power, committed to democracy and the most generous causes both in politics and in academia (Ippólito-O'Donnell, 2016).

Conclusions

Political science and law are closely intertwined in the biography, academic training, work and intellectual trajectory of Guillermo O'Donnell. From its first formulations on the bureaucratic-authoritarian state until its last concern about the role of the law and the social agency in countries of recent democratization, there is an incessant concern to relate the crystallized policy in institutions with a social order embodied in norm converted only in maximum legal state, but in articulation and mutual creation and recreation between State and society. He stressed the narrowness of a political approach outside the study of law and law in specific contexts and moments such as Latin America, where the rule of law is a very precarious reality.

The implications of O'Donnell's thought and work have been replicated by numerous authors who have highlighted the importance of the study of law, the rule of law, the role of law and the judiciary, and not only political institutions in the consolidation of young Latin American democracies. The importance of the proper functioning of a democratic legal order that guarantees its universal, equitable and homogeneous character in the territory gave a strong impetus to a perspective focused on the active role of citizens and the defense of their rights as a central part of the analysis of the contemporary democratic systems. However, more empirical research is still required that applies, adjusts and extends O'Donnell's theoretical model to the current circumstances of insecurity, violence and organized crime that have exacerbated the precariousness of the rule of law in Mexico and Latin America, along with the tendency to see it restrictively as a purely legal problem. Particularly, today it is necessary to recover an approach that enriched and complicated the vision proposed by the political



science of transition processes from authoritarian governments, rethinking the relations between political science and law with a broader and more inclusive perspective where the State, the rule of law and citizenship play a fundamental role in preserving and increasing the quality of democracies.

References

- Ansolabehere, K. (2007). *La política desde la justicia: Cortes Supremas, gobierno y democracia en México y Argentina*. México: Fontamara.
- Berdondini, M. (2012). Notas sobre democracia, agencia y Estado en el legado de Guillermo O'Donnell. *Temas y Debates*, (24), 169-179.
- Bulcourf, P. (2012). El arte de nombrar: Guillermo O'Donnell y el desarrollo de la ciencia política en América Latina. *Temas y Debates*, (24), 123-143.
- Bulcourf, P. y Reina, A. (2009). Comprendiendo al Estado: los aportes de Guillermo O'Donnell a su reconceptualización en América Latina. *Ciencia Política y Relaciones Internacionales*, (2), 117-146.
- Cardozo, N. (2012). Algunas reflexiones sobre Guillermo O'Donnell y su contribución a la teoría del Estado y los estudios sobre políticas públicas en América Latina. *Studia Politicæ*, (26), 40-72.
- D'Alessandro, M. (2016). Introducción. En D'Alessandro, M. y Ippolito-O'Donnell, G. (coords.), *La ciencia política de Guillermo O'Donnell* (pp. 27-32). Buenos Aires: EUDEBA.
- De Sierra, G., Garretón, A., Murmis, M. y Trindade, H. (2007). Las ciencias sociales en una mirada comparativa. En De Sierra, G., Garretón, A., Murmis, M. y Trindade, H. (eds.), *Las ciencias sociales en América Latina en perspectiva comparada* (pp. 17-52). México: Siglo XXI.
- Díaz, E. (2002). Estado de derecho y legitimidad democrática. En Carbonell, M., Orosco, W., Vázquez, R. (eds.), *Estado de derecho. Concepto, fundamentos y democratización en América Latina* (pp. 61-95). México: Siglo XXI.



- Duque, J. (2018). Estados truncados y democracias precarias en América Latina. La influencia de la obra de Guillermo O'Donnell. *Revista IUS*, 12(42), 29-64.
- El Dr. Guillermo O'Donnell fue distinguido por la UNSL (12 de marzo de 2010). En *Universia*. Recuperado de <https://noticias.universia.com.ar/en-portada/noticia/2010/03/12/358460/dr-guillermo-donnell-fue-distinguido-unsl.html>.
- Garzón, E. (2003). El papel del poder judicial en la transición a la democracia. *Isonomía*, (18), 27-46.
- Ibarra, J. (2006). La construcción judicial de la democracia en América Latina. *Espiral. Estudios sobre Estado y Sociedad*, 12(36), 13-37.
- Incio, J. y Marzonetto, G. (2009). Entrevista a Guillermo O'Donnell. *Arte y Práctica*. Recuperado de https://www.academia.edu/5871893/Entrevista_a_Guillermo_ODonnell.
- Ippolito-O'Donnell, G. (2016). La ciencia política como vocación. En D'Alessandro, M. e Ippolito-O'Donnell, G. (coords.), *La ciencia política de Guillermo O'Donnell* (pp. 325-334). Buenos Aires: EUDEBA.
- Knight, A. (2012). Narco Violence and the State in Modern Mexico. In Panster, W. (ed.), *Violence, Cohertion, and State-Making in Twentieth-Century Mexico* (pp. 115-134). Stanford University Pres.
- Laporta, F. (2002). Imperio de la ley: reflexiones sobre un punto de partida de Elías Díaz. En Carbonell, M., Orosco, W. y Vázquez, R. (eds.), *Estado de derecho. Concepto, fundamentos y democratización en América Latina* (pp. 97-110). México: Siglo XXI.
- Marshall, T. (1998). *Ciudadanía y clase social*. Madrid: Alianza Editorial.
- Marx, C. (2003). *El 18 brumario de Luis Bonaparte*. Madrid: Fundación Federico Engels.
- Migdal, J. (2011). *Estados débiles, estados fuertes*. México: F. C. E.
- Munck, G. (2016). Democratización, compromiso político y diseño de una agenda de investigación. Entrevista realizada a Guillermo O'Donnell. En D'Alessandro, M. y Ippolito-O'Donnell, G. (coords.), *La ciencia política de Guillermo O'Donnell* (pp. 285-324). Buenos Aires: EUDEBA.
- Nieto, D. y Milanese, J. (2016). De las transiciones al estancamiento. Revisitando la democratización en la obra de Guillermo O'Donnell. *Co-herencia*, 13(24), 145-177.



- O'Donnell, G. (1978). Apuntes para una teoría del Estado. *Revista Mexicana de Sociología*, 40(4), 1157-1199.
- O'Donnell, G. (1993). Estado, democratización y ciudadanía. *Nueva Sociedad*, (128), 62-87.
- O'Donnell, G. (2001a). La irrenunciabilidad del estado de derecho. *Instituciones y Desarrollo*, 8/9, 43-82.
- O'Donnell, G. (2001b). Democracy, Law and Comparative Politics. *Studies in Comparative International Development*, 36(1), 7-36.
- O'Donnell, G. (2002). Las poliarquías y la ineffectividad de la ley en América Latina. En Mendez, J., O'Donnell, G. y Pinheiro, P. (eds.), *La ineffectividad de la ley y la exclusión en América Latina* (pp. 306-336). Barcelona: Paidós.
- O'Donnell, G. (2003). Acerca del Estado en América Latina contemporánea. Diez tesis para discusión. Texto preparado para el proyecto *La Democracia en América Latina*. Dirección para América Latina y el Caribe del Programa de las Naciones Unidas para el Desarrollo (DRALC-PNUD).
- O'Donnell, G. (2005). Estado de derecho y democracia. *Nexos*. Recuperado de <https://www.nexos.com.mx/?p=11405>.
- O'Donnell, G. (2008a). Algunas reflexiones acerca de la democracia, el Estado y sus múltiples caras. *Universidad Nacional de San Martín*, 36, 1-27.
- O'Donnell, G. (2008b). Hacia un Estado de y para la democracia. En *Democracia/estado/ciudadanía. Hacia un Estado de y para la democracia en América Latina* (pp. 25-62). Lima: Programa de las Naciones Unidas para el Desarrollo.
- Peruzzotti, E. y Smulovitz, C. (eds.) (2002). *Controlando la política: ciudadanos y medios en las nuevas democracias*. Buenos Aires: Temas.
- Raz, J. (2002). El estado de derecho y su virtud. En Carbonell, M., Orosco, W. y Vázquez, R. (eds.), *Estado de derecho. Concepto, fundamentos y democratización en América Latina* (pp. 15-36). México: Siglo XXI.
- Rodríguez, J. (2016). *Estado de derecho y democracia*. México: Instituto Nacional Electoral. Cuadernos de divulgación de la cultura democrática.
- Tilly, Ch. (2004). ¿De dónde vienen los derechos? *Sociológica*, 19(55), 273-300.



- Trocello, G. (2012). La necesaria reconciliación entre ciencia política y ciencia jurídica. Apuntes sobre la clase magistral de Guillermo O'Donnell: acerca de la ley, el Estado y la democracia. *Temas y Debates*, (24), 31-39.
- Villafuerte, L. (2007). Estado de derecho y la construcción de la democracia en México. Una agenda mínima. *Revista Internacional de Ciencias Sociales y Humanidades, Sociotam*, 17(1), 193-214.

