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Artículos Científicos

Naturaleza jurídica y efectos de las consultas públicas

Legal nature and effects of public consultations

Natureza jurídica e efeitos das consultas públicas

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Resumen

En este trabajo se refieren las bases fundamentales de los derechos humanos, así como el sustento de la democracia y de las consultas públicas en el contexto mexicano para abordar los marcos teóricos y conceptuales concernientes a tópicos propios de los derechos humanos, democracia y consultas públicas. El objetivo fue para transitar hacia el estudio particular de la regulación normativa de las consultas públicas en el estado mexicano para afrontar ulteriormente un análisis comparativo que en el ámbito de las consultas públicas han experimentado diversos países. Para ello, se han aplicado los métodos sintético, analítico y dialéctico con el fin de determinar si las consultas públicas lograrán acercar el derecho humano de la democracia a toda la sociedad. Como conclusión se puede indicar que el sistema jurídico mexicano no cuenta con una adecuada regulación normativa para dichas consultas, por lo que se puede afirmar que debido a un ínfimo grado de eficacia y eficiencia, no es factible garantizarles un alentador porvenir.

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Palabras clave: democracia, derechos humanos, consultas públicas.

Abstract

In this work the fundamental bases of human rights are known, as well as the sustenance of democracy and public consultations in the Mexican context, thus addressing the theoretical and conceptual frameworks, concerning topics typical of human rights, democracy and public consultations, to move towards the particular study of the regulatory regulation of public consultations in the Mexican state, to further face a comparative analysis that various countries have experienced in the field of public consultations. It is developed with the support of synthetic, analytical and dialectical methods, to determine if it is through Public Consultations that the human right of democracy will be brought closer to the whole society, the result of which is that the Mexican legal system does not have an adequate regulatory regulation applicable to topics specific to these consultations, and confirming that before a very small degree of effectiveness and efficiency it is not feasible to guarantee them an encouraging future.

Keywords: democracy, human rights, public consultations.

Resumo

Este trabalho se refere às bases fundamentais dos direitos humanos, bem como à sustentação da democracia e das consultas públicas no contexto mexicano para abordar os marcos teóricos e conceituais relativos aos temas de direitos humanos, democracia e consultas públicas. O objetivo foi avançar para o estudo particular da regulamentação normativa das consultas públicas no Estado mexicano para, posteriormente, enfrentar uma análise comparativa que diversos países experimentaram no campo das consultas públicas. Para tanto, métodos sintéticos, analíticos e dialéticos têm sido aplicados para determinar se as consultas públicas aproximarão o direito humano à democracia de toda a sociedade. Em conclusão, pode-se assinalar que o ordenamento jurídico mexicano não possui regulamentação normativa adequada para tais consultas, de modo que se pode afirmar que, por um grau desprezível de eficácia e eficiência, não é viável garantir-lhes um futuro animador.

Palavras-chave: democracia, direitos humanos, consultas públicas.



Introduction

Democracy — be it understood as a concept, form of government and mechanism to establish the relationship between governors and governed — has a long way from its birth and evolution to its current conceptualization. In fact, this concept does not arise, at least in principle, as a claim to human rights, but as an evolution of these, which has led to it being considered as a modern human right. In the social context there are an infinity of rules of conduct, some of which are not even written, but they regulate the life of individuals in society to provide it with a certain harmony, while others are put into effect by the State to guarantee the compliance with obligations and, therefore, the rule of law. However, in human rights, and especially in relation to democracy, it is an area not yet explored, which is currently becoming relevant due to the emergence of public consultations as a non-legal figure in which it is intended that the citizens make their human right to free democratic exercise prevail, or at least so that they consider that they are before a democratic government that asks the governed for their valuable opinion. In this regard, Capellán de Miguel (2018), in his proposal to rethink the conceptual history of democracy in the Ibero-American world and taking into account its specific weight from a historical and semantic perspective, refers to the following:

In this long time of growing use, democracy had become a kind of repository - in a "container concept" - where all the positive political concepts and values that a part of Western society had, first aspired and aspired, had historically accumulated. then conquered: freedom, rights, equality, progress, justice (p. 146).

The nexus between democracy and human rights is contained in the Universal Declaration of Human Rights, proclaimed in Paris on December 10, 1948 by the General Assembly of the United Nations (UN) (1948) through the pronouncement of Resolution A (III) , which states:

The will of the people is the basis of the authority of public power; this will must be expressed through authentic elections to be held periodically, by universal and equal suffrage and by secret ballot or other equivalent procedure that guarantees freedom of vote (article 21).



Relying on freedom of opinion, expression and transparency in the public administration, in recent dates the figure of public consultations has been used repeatedly by the federal Executive as a way to pretend democracy and, above all, to legitimize its decisions . However, this figure of public consultations is not duly regulated, since the procedures, parameters or effects of its performance and its result have not been established, nor is it clear whether or not they are legally established. This research, therefore, finds its justification in the excessive use of the public consultation mechanism, in its application to topics irrelevant to this democratic instrument and in its underuse in relevant aspects of national life, which only reflects the absence of value and Political will to assume the risks derived from a direct but unsuccessful governmental determination, or else the lack of sufficient preparation to carry them out.

Objectives and hypotheses

The general aim of the current investigative work is to analyze the foundations of human rights and its different considerations, as well as the concept and evolution of democracy in order to establish whether the latter is considered as an essential content of these; Otherwise, confirm if its explicit inclusion is a necessity in the current reality of Mexico and if its omission or absence has negative implications for the correct and optimal development and progress of the social life of the country, trying to determine if it is through the public consultations that will bring the human right of democracy closer to the whole of society. The following are specified as specific objectives: (i) identify the background to the foundations of human rights, democracy, and public consultations in Mexico; (ii) analyze the nature and characteristics of human rights, their genesis and different generations; (iii) know the nature of democracy and its main concepts, origin, evolution, and justification; (iv) know the nature of public consultations and their main concepts, origin, evolution, and justification; (v) establish whether democracy as an ideology belongs to human rights, their importance and social significance; (vi) determine whether currently public consultations are a fundamental principle of everything concerning human rights in its various manifestations; (vii) analyze the schools, theories, currents of thought and ideas that, as a theoretical framework, are applicable to the prevention or resolution of the problem under study in this research; (viii) integrate the convenient conceptual framework for the study of the institutions



that are evoked in this research study; (ix) examine the federal regulations governing legal figures that recurrently converge in the investigative activity developed in this documentary research work; (x) carry out a comparative analysis of the experiences that other countries have had in terms of public consultations in order to demonstrate the hypothesis formulated here, and (xi) determine if, according to the analysis carried out of the background, theoretical, conceptual, regulatory and the experiences that other countries have had in terms of public consultations, the Mexican regime allows public consultations to be regulated and carried out effectively and efficiently. As a hypothesis, it is proposed that democracy should be considered as an elementary principle of human rights within the structure and legal system of our country. This is due to the fact that a series of implications of various kinds that affect the particular sphere of people and are reflected in their well-being and peaceful coexistence are derived from this principle. Public consultations are one of the ways to bring democracy closer to the social collective, provided that its nature and processes are duly regulated to obtain the legitimacy of its results.

Materials and methods

The present investigation is developed with the support of the synthetic (i) methods (which consists of a process by which apparently isolated facts are related and a theory is formulated that unifies the various elements of human rights, democracy and public consultations); (ii) analytical (by which the elements of phenomena resulting from said concepts are distinguished) and each one of them is reviewed in an orderly fashion separately, (iii) and dialectical (when considering the historical and social phenomena inherent to human rights , democracy and public consultations, since they are in continuous movement, since reality is not something immutable, but is subject to contradictions, as well as perpetual evolution and development, and propose this method of all phenomena to that are studied in relation to others, and in their state of continuous change, by virtue of the fact that said method considers that nothing exists as an isolated object, but that each form or social phenomenon, having its own and peculiar characteristics, must be studied in its internal transformation process. Consequently, the guidelines provided by various authors on methodological matters have been taken into consideration, mainly through the work of Rojas (2012), which focuses on research in social sciences. Regarding the data collection techniques used for the elaboration of this research, the Redalyc, Scielo, Scopus and Ebsco



databases were consulted, among others, where instruments for data collection, classification, measurement, correlation and analysis were found. . The development of this research was essentially based on the documentary technique of data collection, since due to the nature of the issue raised, the search carried out was eminently heuristic, since it focused on the study of certain conditioning data of the exercise of the human rights, democracy and public consultations, so a series of questions have been raised from its examination and criticism and the hypothesis on which this research is centered has been formulated.

By virtue of the foregoing, the documentary search for data carried out in this investigation presents the following particular features: (i) primary sources have been preferred; (ii) both ancient and contemporary classics of the specialty have been used, so the query range ranged between 1960 and 2019; (iii) not only has information been collected and accumulated, but also personal contributions have been valued, analyzed and made; (iv) the quality of the research has not been measured based on its quantity, but rather on its content and suitability, and (v) the information has referred to the identified problem, which has been systematically selected, analyzed and valued.

Results

The results are shown through the approach of the following three sections: 1) theoretical and conceptual frameworks inherent to human rights, democracy and public consultations; 2) bases of human rights, democracy and public consultations in Mexico, and 3) normative regulation of public consultations in Mexico.

Bases of human rights, of democracy and the public consultations in Mexico Human Rights

To this end, an enunciative compilation was made and paraphrasing Nogueira (2003), regarding the supports of human rights throughout history: (i) iusnaturalista foundation or legal objectivism, which in turn includes the current of ontological natural law supported by Thomist and Neo-Thomist conceptions; the stream of rationalist natural law and the theories of the social contract that involve classical contractualism and neo-contractualism, and contemporary deontological natural law or the ethical or axiological foundation of human



rights; (ii) justification of form and content and structure, facing the first requirement to transform the dogmatic content of human rights into materialized positive law, which is required for its knowledge, execution and organization, and through the second The support of human rights is based on the constructive ideas of fundamental rights by Alexy (2012), where human rights rest on the basis of the theory of discourse and, therefore, on direct theoretical-discursive foundations of rights humans, as are the autonomy argument², that of consensus and that of democracy, which complement and reinforce each other; (iii) the autonomy argument, based on which everyone has the individual right to freely judge what is most beneficial and what is acceptable to act accordingly; (iv) the consensus argument, since the legitimation of the right is closely linked to the universal acceptance of both consecrating it and preserving it; (v) the argument for democracy, since only through it is it possible for fundamental political rights and human rights to govern and can be exercised with sufficient equality of opportunity; (vi) the historicist foundation of human rights by which it is affirmed that the foundation of human rights is really found in social needs and the feasibility of solving them in society; (vii) the positivist foundation by virtue of which the law is such if it is provided for in a positive regulation in force and will have its own justification and independent of possible moral justifications or support in values; and (viii) the trialist foundation of human rights by virtue of which the existence of a legal phenomenon will necessarily imply the presence of three elements: an underlying fact, a value that a certain situation attributes to such fact and a regulation with an integrating function of the elements. Through its position of realistic and critical normativism, Ferrajoli (2004) supports all those subjective rights that are recognized as immanent to all human beings provided with the quality of people, citizens or capable of acting, since by subjective right it should be understood what following:

Any positive expectation (of benefits) or negative (of not suffering injuries), assigned to a subject by a legal norm, and by status, the condition of a subject, provided for by a positive legal norm, as a presupposition of his suitability to

² Recomendable consultar en el ámbito de la autonomía y consecuente emancipación la obra de Veca, S. (1990). *Cittadinanza. Riflessioni filosofiche sull'idea di emancipazione* (Prima edizione in "Idee" marzo 1990 ed.). Milano, Italia: Gigjacom Feltrinelli editore Milano.



be a holder of legal situations and / or author of the acts that are the exercise of these (p. 37).

In this regard, Nogueira (2003) warns of the existence of various ways of classifying rights, among which are the following: (i) according to their object and purpose; (ii) according to the criterion of the protected legal asset and its purpose; (iii) according to the criteria of the form of exercise of them; (iv) according to the criteria of the type of legal relationship they represent; (v) according to people's differences in status; (vi) according to its structure; (vii) according to the values protected in them, and (viii) according to international agreements. Therefore, it is from the classification based on the object and purpose of human rights that political rights appear, which include the right to participate in public consultations. As for democracy, the first vestige of a democratic regime in our country is found in article 4 of the Constitution of October 4, 1824, when it admits a representative, popular and federal republic as a form of government. Subsequently, it is in article 40 of the Political Constitution of the United Mexican States that we confirm this circumstance. Let's talk now about democracy as a value. In the Guide for Peer Educators, which as a project has been developed as an action to strengthen good governance and accountability in Uganda by the Konrad-Adenauer-Stiftung (KAS) Office in that country (2011), and supported by the European Union , we find that democracy is attributed the rank of value:

Values are things people cherish and will protect to ensure their survival. Culture, which by simple definition is the way of life of a given people, is a good example of an embodiment of values. Democracy as a value, then, means that people will do anything to protect it as it is a part of their culture, thus a way of life of a given people

[Los valores son cosas que las personas aprecian y protegerán para garantizar su supervivencia. La cultura, que por definición simple es la forma de vida de un pueblo determinado, es un buen ejemplo de una encarnación de valores. La democracia como valor, entonces, significa que las personas harán cualquier cosa para protegerla, ya que es parte de su cultura, por lo tanto, una forma de vida de un pueblo determinado] (pp. 10-11).

The foregoing without underestimating the values of modern democracy which, as a method of shaping governments and enabling policies, imply the adoption of a series of



principles that justify and make it desirable (at least with respect to other modalities of a mainly authoritarian nature) and that are the product of social evolution based on the rationality of peoples: we refer to freedom, equality and fraternity. Next, let us verify the modalities in which democracy materializes³. Direct democracy refers to a form of government in which “the people participate continuously in the direct exercise of power”, it is a self-governing democracy, since the people, gathered in an assembly, deliberate and decide on public affairs. It is still practiced today in small communities, such as the cantons of Glarus, Appenzell and Unterwald in Switzerland. Representative democracy is considered an indirect democracy, in which the people do not govern, but elect representatives who govern it; In it, decision-making has enough information to the extent that it is developed through various stages and a series of filters. Thus, the limitations to participation, associated with the size and complexity of societies, can be overcome, representation allows a positive policy that avoids polarization in society. Thus, minorities have a voice and their rights are better protected. It is true that at the time of legislating or participating in public decision-making, the representative does not always purely serve the interests of those he represents. His loyalties are divided between them, his political party, and his personal values and ideals; For this reason, at present it is these representative institutions that constitute the framework of democratic life. The mechanisms of direct democracy - such as the plebiscite, the popular initiative or the revocation of representatives - have to be studied, since currently both types of democracy must be analyzed.⁴.

Let us now identify the advantages of representative government: (i) the protection granted to minorities; (ii) the limitation to demagoguery and abuse of political power; (iii) stability in public decisions; (iv) the orderly change in policies and the civil service, and (v) the balance between participation and governance. For its part, the advantages of direct democracy are these: (i) expressing individual interests in a pure way; (ii) allow the direct expression of public opinion in legislative processes; (iii) increase the sensitivity of legislators to movements of opinion; (iv) reduce the distortion effects created by political parties and intermediate associations, and (v) increase citizen participation. As far as the democratic

³ Para profundizar sobre la evolución de la participación democrática y sus modalidades se sugiere consultar la aportación de Prud'homme, J.-F. (2016). *Consulta popular y democracia directa* (1.ª ed., vol. 15). (I. N. Electoral, Ed.) Ciudad de México, México: Instituto Nacional Electoral.

⁴ La diversidad de variables democráticas es ampliamente explicada por Rodríguez Burgos, K. (2015). *Democracia y tipos de democracia*. Ciencia política. Perspectiva multidisciplinaria, 250.



crisis is concerned, it is imperative to take into account the particularities of political systems, as well as the specific situations in which direct consultation methods are applied. An unavoidable theme is that of the democratic crisis. In this sense, it is worth mentioning the position of Fernández (2013), who in his work concerning democracy as a form of government refers to governmental strategies within democracy and to the crises of the great models. This author synthesizes his impression of the various regimes, more economic than political, including communist, social-democratic, republican, socialist, as well as the welfare state. Results of the studies carried out reveal that “turning out to vote is the most emblematic means of participating in the democratic process. Low turnout rates are often interpreted as a signal of dissatisfaction with the political decision-making process” [Voting is the most emblematic means of participating in the democratic process. Low participation rates are often interpreted as a sign of dissatisfaction with the political decision-making process] (International Institute for Democracy and Electoral Assistance [IDEA], 2017, p. 105). We are, then, faced with the value of democratic freedom that implies the ability to govern or determine oneself, an indispensable characteristic of every politically active citizen and support for the fundamental democratic principle of popular sovereignty.

Referring particularly to peacebuilding, including in conflict-affected states, and in design work for the resilience of democracy, the International Institute for Democracy and Electoral Assistance (2017) testifies that “inclusion does more than bring diverse groups into decision-making processes. It can also help promote broadmindedness in society and increase social tolerance. Inclusive, consensual systems promote mutual respect and tolerance, and help facilitate deliberation.” [Inclusion does more than bring diverse groups into decision-making processes. It can also help promote open-mindedness in society and increase social tolerance. Inclusive and consensual systems promote mutual respect and tolerance, and help facilitate deliberation] (p. 257). Thus, the cohabitation of ideas must favor the legitimacy and action of public power, so that every liberal democracy must have an institutional mechanism for setting political objectives that prevents its subjection to the values of a specific community of people.



Public inquiries

Regarding the antecedents of this figure in the Mexican system, the first is found in the Law of Citizen Participation of the Federal District. On this precedent, Escobar (2014) confirms that the Law of Citizen Participation of the Federal District is the immediate precursor of the popular consultation in Mexico, under the connotation of neighborhood consultation that, subject to a simple procedure, was intended to be an instrument of solution of problems of the place where the citizens resided or as an instance to raise the needs and interests of the residents of the same place. The foregoing with the understanding that said ordinance was repealed in 2019 by the Law of Citizen Participation of Mexico City. The second vestige appears in article 35, section VII, and 36, section III, of the Political Constitution of the United Mexican States. Indeed, this institution is integrated into article 35, section VII and article 36, section III of the Magna Carta, recognizing respectively as citizens' rights to vote in popular consultations on issues of national importance, and to vote in elections and elections. popular consultations, in the terms established by law. The third precedent is located in the constitutional reform of February 10, 2014, from which the Federal Law of Popular Consultation emerges into legal life, published in the Official Gazette of the Federation on March 14, 2014, which serves as regulatory of section VIII of article 35 of the Political Constitution of the United Mexican States. For this reason, Escobar (2014) points out that “with this new regulation, a new meaning is given to the Popular Consultation, since the procedures are established through which this mechanism of citizen participation can be put into practice” (p. 201) . Now, and with regard to the origin of public consultations, for the development of this section we take advantage of the relevance of the words of Sartori (2009), who assures that elections are free only if they express their own opinions.⁵:

Elections are said to be free. Certainly, but opinions must also be free, that is, freely formed. If opinions prevail, elections cannot be free. A sovereign people that has nothing to say about itself, a people without opinions of its own, counts for less than two glasses. (p. 31).

⁵ De igual manera, se sugiere la lectura de la obra de este autor que se ha tornado indispensable para los estudiosos de esta temática: Sartori, G. (2007). *¿Qué es la democracia?* (1.ª ed.). Madrid, España: Taurus.



On the other hand, and reflecting on what should be understood by public opinion (whose crystallization would take place today through public consultations), and the effects that it produces, Sartori (2009) argues:

Let it be clear, an opinion disseminated among the general public can and does occur on any matter. For example, opinions about football, about what is beautiful, about what is good, are also public opinions, but when you say public opinion, you have to understand that it has as its object the *res publica*, the collective interest, the public good. (pp. 31-35).

It is, then, a kind of elocution issued as an opinion - not as a will - by a segment of people who express their feelings in public affairs, so this exercise combines both the subject and the object of the expression, and that at the Being representative of the general interest, general welfare, public interest or the common good, refers to something immanent in the public matter. Regarding the consequences of the expression of public opinion, the existence of great subtlety can be noted, since "it remains true that, even when we achieve a relatively autonomous public opinion, the result is fragile and relatively incomplete" (Sartori, 2009, pp. 31-35). With this, a frustrating reality is shown that could hardly be hidden, since "it is true that the public, the general public, is never very informed, does not know much about politics, and is not too interested in it" (Sartori, 2009, pp. 31-35). By way of concept, Sartori (2009) reasons regarding participation:

"Participation" is taking an active, voluntary and personal part. "Voluntarily" is an important detail, because if people are forced to participate by force, that is mobilization from above and not participation from below. I insist: participation is starting up yourself, not that others start you up or mobilize you from above (p. 35).

Speaking about the justification of public consultations, and from our way of seeing things, public consultations arise as a need to legitimize the existence of an authentic democracy, a reasoning that is identified with that of Sartori (2009) when he testifies that "the democracies, in their gray day-to-day operations, often deserve little credit" (p. 38). Faced with this reality, it is possible to conclude that "the real danger that threatens a democracy that officially no longer has enemies is not in the competition of counter-ideals, it is in claiming a 'true democracy' that transcends and repudiates the existing one" (Sartori, 2009, p. 38). If the authentic and main characteristic of democracy consists of the peaceful



removal of rulers who fail to fulfill their function, the electoral process becomes a control mechanism rather than an election, to guarantee respect for its own essence: alternation in the power. In the Guide for Peer Educators, which as a project has been developed as an action to strengthen good governance and accountability in Uganda by the Konrad-Adenauer-Stiftung Office (2011), in that country, and supported by the European Union, we find the justification of the consultations as a form of participation by indicating the following:

Democratic participation can occur in two ways: First, people can participate through established structures of the adopted forms of democracy; and second, they can participate through civil associations. In democracies, the election of leaders must be free and fair. In some societies, a referendum is used to decide on major issues of the day. In this way citizens become part of decision-making and governance

[La participación democrática puede ocurrir de dos maneras: primero, las personas pueden participar a través de estructuras establecidas de las formas de democracia adoptadas; y segundo, pueden participar a través de asociaciones civiles. En las democracias, la elección de líderes debe ser libre y justa. En algunas sociedades, se utiliza un referéndum para decidir sobre los principales problemas del día. De esta forma, los ciudadanos se convierten en parte de la toma de decisiones y la gobernanza] (p. 15).

Thus, the challenges that democracy must overcome, most likely through some adjustments that legitimize social participation through public surveys, are evidenced, thus recognizing the existence of a resilience of democracy:

Political parties must tackle four key challenges to survive in the changing political landscape: (a) deliver results to address multifaceted challenges such as global economic crises, international terrorism and refugee flows; (b) restore citizens' sense of inclusion, particularly among marginalized groups; (c) respond to populism; and (d) adapt to new ways of interacting with both party members and the electorate.

These challenges relate to the resilience of democracy”

[Los partidos políticos deben abordar cuatro desafíos clave para sobrevivir en el cambiante panorama político: (a) entregar resultados para abordar desafíos



multifacéticos como las crisis económicas mundiales, el terrorismo internacional y los flujos de refugiados; (b) restaurar el sentido de inclusión de los ciudadanos, particularmente entre los grupos marginados; (c) responder al populismo; y (d) adaptarse a nuevas formas de interactuar con los miembros del partido y el electorado.

Estos desafíos se relacionan con la resiliencia de la democracia] (IDEA, 2017, p. 98).

The very term of democratic resilience is conceived as the government's ability to face problems from abroad without compromising trust in its own institutions or dissatisfaction with democracy. For the purposes of this investigative work, the opinion of Bovero (2012) seems opportune to me, who externally formulates a severe criticism of the way in which electoral decisions have been adopted, since he affirms that there has been a transition from democracy to a pleonocracy:

In my language, elections are no longer democratic, but pleonocratic, they institute a kind of elective tyranny of the majority. All power to a part of the people is not a democratic principle. In a democracy - according to my conception of it - the function of the elections is not to directly grant the power of collective decision to (the representatives of) a part of the citizens; but rather that of determining the composition of the body authorized to make collective decisions so that all the opinions of citizens find political representation, without excluding any and in their respective proportions (p. 326).

Bovero (2012) is aware of the orientation to converge in a variant that he has called elective autocracy:

Contemporary real democracies as a whole show a clear tendency to converge towards the second type of regime, that is, to realize the second element of my abstract hypothesis. This is a regime that I suggest calling (recognizing as) elective autocracy (p. 338).

Raising the question of a feasible democracy without elections inevitably implies referring to participatory democracy as an alternative for collective decision, and among whose practices are participatory budgeting and collaborative participation (primarily critical and contrasting), contextually located in the environment of the called movement of movements,



which has as a characteristic the inclusion of direct and delegated democracy in the decision-making process of a political nature (Bovero, 2012). This leads Bovero (2012) to assert that “the deliberation that must precede the final political decision requires that the discussion be inclusive, not selective; and effective, not merely casual and eventual ”(p. 348). By way of conclusion, Bovero (2012) states that “a non-deliberative representative democracy is empty and runs the risk of degenerating into the self-critical oligarchy (or a monarchy, or a pleonocracy). A non-representative deliberative democracy is blind and runs the risk of becoming a dangerous illusion ”(p. 340). The reality that deliberative democracy faces should not be overlooked, since it has limited itself to adopting institutions and mechanisms of liberal democracy, complemented by a growing insertion of elements of citizen participation, space and public opinion, in order to depressurize the tension between democracy and liberalism, but which still has to face the problem of defining the person responsible for making binding decisions and guaranteeing the effectiveness and efficiency of the expectations of results resulting from deliberation.

Theoretical and conceptual frameworks inherent to human rights, democracy, and public consultations

Theoretical framework

Based on a first theoretical support, democracy as an ideology belongs to the category of human rights, which legitimizes its importance and social significance. Consolidated from the adoption of the Universal Declaration on Democracy by the Inter-Parliamentary Council of the Inter-Parliamentary Union (IPU) for Democracy for All (1997), on the occasion of its 161st session held in Cairo, Egypt, on September 16, 1997, the principles enshrined in articles 1, 2, 3 and 18, which are transcribed below, stand out for their importance.

1. Democracy is a universally recognized ideal and an objective based on values common to all the peoples that make up the world community, regardless of cultural, political, social and economic differences. Therefore, it is a fundamental right of the citizen, which must be exercised in conditions of freedom, equality, transparency and responsibility, with respect for the plurality of opinions and the common interest. 2. Democracy is both an ideal to be pursued and a mode of government that is applied in a way that reflects



the diversity of experiences and cultural particularities, without departing from internationally recognized principles, standards and rules. Therefore, it is a state or condition, constantly perfected and always perfectible, whose evolution depends on various political, social, economic and cultural factors.

3. As an ideal, democracy essentially aims to preserve and promote the dignity and fundamental rights of the individual, guarantee social justice, promote the economic and social development of the community, and strengthen the cohesion of society. that national tranquility and create a climate conducive to international peace. As a form of government, democracy is the best way to achieve these goals; It is also the only political system capable of correcting itself. 18. If the existence of an active civil society is an essential element of democracy, the ability and willingness of people to participate in democratic processes and choose the methods of government are not evident. Therefore, it is necessary to create favorable conditions for the effective exercise of participatory rights, while eliminating the obstacles that prevent or limit such exercise. Therefore, it is essential to constantly promote, in particular, equality, transparency and education, and to remove obstacles, such as ignorance, intolerance, apathy, lack of genuine options and alternatives, and the absence of measures to correct the social, cultural, religious, racial or gender imbalances and discrimination (Annexe VII).

It is precisely in this article 18 that we find justification for public consultations in order to exercise participatory rights by having the right to establish favorable conditions and removal of obstacles that limit or impede it.⁶.

Starting with a second theoretical influence, let's analyze the functionality of public consultations based on the Guide for the elaboration of constitutions prepared by a "Constitutionmaker" of the United Nations (UN) (2013-2019). Public consultations are carried out as part of the constitutional process to actively seek the contributions of citizens and organized groups on the content of the constitutional text and the process of elaboration of the political Constitution of a country, in this way public consultations are constituted as Two-way feedback mechanisms to give due consideration to the informed contributions of

⁶ Sobre la protección de los derechos fundamentales se sugiere analizar la obra de Hernández Valle, R. (1990). *La tutela de los derechos fundamentales* (1.^a ed.). San José, Costa Rica: Juricentro.



citizens and to allow them to understand the decisions reflected in the supreme law, whether new or revised. In the elaboration of the constitution, public consultations are of great support, because with this it is determined whether or not citizens support its preparation, society is asked about its needs and priorities that must be reflected in said constitution, it encourages dialogue and discussion at the national level on political, social and economic issues, expands the discussion on content beyond what politicians would do, makes it easier for the constituent body to have ideas from a large number of people who can contribute options innovative, trust is fostered between citizens and their leaders, and the principles and practices of democracy are taught. Ideally, public consultations should include the majority of the population or at least all interested parties from the beginning, or to whom a certain section of the Constitution will be directed or determined, so general categories and special approaches should be considered.⁷.

Of importance for the credibility of the consultation is who carries it out, as it can be done by the constituent body itself, an independent body that carries it out through an official mandate, local officials or civil society organizations. Depending on the status that each body maintains before society, it will be the acceptance and credibility of the result of the consultation and, therefore, the conformity that the community will have with respect to what is written in the constitution resulting from the consultation carried out.⁸.

Queries can be unstructured, semi-structured, or structured. It is essential in public consultations to communicate to citizens how the contributions of citizens were used; in this way, you ensure that people perceive the process as legitimate. Therefore, it must be communicated to whom the consultation was made, what were the most recurrent contributions from the public, which contributions led to changes and why and what changes were not made, and what were the reasons⁹.

⁷ Verificar en ese aspecto la obra de Casado, L. (2018). La aplicación del trámite de consulta pública previa en el procedimiento de elaboración de normas locales dos años después de su entrada en vigor. *Revista Aragonesa de Administración Pública*, (52), 159-210.

⁸ En materia de participación de la sociedad civil, se recomienda revisar a Milano, A. y Zanhueza, A. (2016). *Consultas públicas con sociedad civil: guías para agencias ejecutoras públicas y privadas* (1.ª ed.). (B. I. Desarrollo, Ed.) Banco Interamericano de Desarrollo.

⁹ Para profundizar en la aportación ciudadana en dicha elaboración se recomienda revisar la obra de García García, M. D. (2008). La participación ciudadana en la elaboración de disposiciones reglamentarias. Participación funcional e iniciativa reglamentaria. *Revista Catalana de Dret Públic RCDP*, (37), 416-460, así como García, M. D. (2008). La participación ciudadana en la elaboración de disposiciones reglamentarias: participación funcional e iniciativa reglamentaria. *v lex Información Jurídica Inteligente*, 419-156.



A third theoretical support is supported by the reciprocally binding consultation, given its considerable relevance and inspiring influence. In the space for reflection devoted to the elements of democracy, democratization and de-democratization, Tilly (2007) shares with us the importance of the opinions, needs and demands made by citizens in a democratic regime, and makes a particular allusion to reciprocal consultation binding. Let's see his opinion according to the translation that we allow ourselves to carry out for this purpose:

Part of public policy consists of consulting citizens about their opinions, needs and demands. The consultation includes any public media because citizens express their collective preferences regarding state personnel and policies. In relatively democratic regimes, competitive elections certainly give citizens a voice, but so do pressure groups, petitions, referendums, social movements, and opinion polls. This time the missing complications are obvious: bribes, chains of patrons and clients, favors to constituents and followers, kinship connections between officials and similar phenomena blur the boundary between public and private policy. (p. 13).

In the same way, this writer refers to the two limits of democracy; These are the democratization that implies an increasing tendency of the consultation (to make it broader, considerably more egalitarian, more subject to protection and therefore more binding), and the de-democratization that implies the contraction of said phenomena. The fair weighting of binding consultation in a democratic regime is assessed by Tilly (2007) in concluding:

For our purposes, a regime is democratic to the extent that the political relations between the state and its citizens present broad, equal, protected characteristics and mutually binding consultation. Consequently, democratization consists of a movement of the regime towards this type of consultation, democratization the movement of a regime away from it.(p. 189).

It is in the economic analysis of law or Economic analysis of law where we locate the fourth theoretical support of this research, taking advantage of the contributions of Coase (1960), Calabresi (1970), Cooter and Ulen (2016) and Cossío (2015). On the subject of this investigative work, the use of economics is that it promises a scientific theory to presage the



effects of legal norms on the behavior of the institutions that organize public consultations and the citizens who will exercise the right to speak democratically through your participation in those. We are therefore situated in the sphere of the economy where the cost-benefit of the implementation of public consultations will be valued to compensate somewhat for the vices of lack of participation and, therefore, of legitimation existing in direct democracy. Now, with regard to the contributions that the economic analysis of law can promise to the issue addressed in this research, the implementation or adaptation of public policies through tools of an economic nature predominate¹⁰ and the just-appreciation of the cost-benefit that would have the adaptation of the legal norm to the dominant reality in the democratic participation of the citizen through the exercise of public consultations, of its future as a mechanism of legitimation of democracy and its possible consolidation as a recurring tool in matters of national importance, since they could be an optimizing source of budgetary resources, based on an understanding of the factors adjusted to the economy, thus mitigating the risk of continuing to operate an out-of-date democratic regime in the face of the current lack of legitimacy derived from vices or democratic crisis, such as party democracy, consociativism, elective autocracy, pleonocracy, populism, as well as facing the main challenges of political parties that are announced throughout this research.

Convenient conceptual framework for the study of the institutions that are evoked in this research study

The first concept to unravel is that of human rights; In this sense, and taking into account the contribution of Nogueira (2003), we could say:

The concept of human rights, in the contemporary context, is generally reserved to refer to the rights of the person, recognized and guaranteed by international law, be it customary or conventional (international human rights law and international humanitarian law). Many times the concept extends to constitutional rights (p. 58).

¹⁰ Requerimiento que ha venido colmando la Organización para la Cooperación y Desarrollo Económicos (OCDE) (2017). *Estudio de gobernanza pública de la OCDE*. Chile. Informe 2017. Crear un entorno propicio para un OCDE Mejores Políticas para una Vida Mejor., 36.



A second concept of relevance to our research is located in democracy. In its compilation on the study of the interaction between democracy and development, the United Nations Educational, Scientific and Cultural Organization (Unesco) through Buotros-Ghali (2003), considers:

Democracy can be defined in short as a political system capable of correcting its own dysfunctions. But an authentic democracy cannot be limited in any case to a simple institutional framework, but must also be reflected in a culture, a spirit that fosters tolerance, respect for others, pluralism, balance and dialogue between the constitutive forces of the society (pp. 7-8).

Participation represents the third important concept in this research. In accordance with the Draft Guide for Peer Educators formulated by Konrad-Adenauer-Stiftung (KAS) through its Office in Uganda (2011), as an action to strengthen good governance and accountability in that country, and under the auspices of of the European Union, we identified participation as a functional ingredient of democracy, stating that “participation is a component of democracy that refers to the process by which people act politically to connect with the government and thus become self-governing”(p. 15). The last concept to analyze in this work we identified in public consultations. As a result of what has been investigated in the framework of democracy and its variants, we allow ourselves to coin the following concept of public consultation: a modality of putting into exercise the rights of democratic participation that serve as an instrument of active search for the contributions of citizenship and organized groups with respect to relevant issues of a country, whose usefulness is to provide bi-directional feedback in order to legitimize and understand the decisions adopted based on the identified needs and focused priorities, thereby fostering the confidence of citizens by having the opportunity to discuss, plan and decide on the issues to be consulted, with the understanding that its effectiveness and efficiency will depend on the existence and adequate execution of the respective operational plan.



The normative regulation of public consultations in Mexico The Political Constitution of the United Mexican States

The articles of the Political Constitution of the United Mexican States (1917) that contain the relevant provisions for this investigative search are those that in a synthesized form are cited below: In the field of human rights, Article 1 provides for their protection and guarantees for their protection, as well as the pro persona principle, the obligation for the authorities to promote, respect, protect and guarantee them, in accordance with the principles of universality, interdependence, indivisibility and progressivity. Regarding the rights of indigenous communities¹¹ to pronounce itself through consultation, the second article recognizes the obligation of the Mexican state to define and develop educational programs with regional content that recognize the cultural heritage of its peoples, in accordance with the laws of the matter and in consultation with indigenous communities, as well as consult indigenous peoples in the preparation of the National Development Plan and the plans of the states, municipalities and, where appropriate, the territorial demarcations of Mexico City and, where appropriate, incorporate the recommendations and proposals that they do¹².

In the field of access to public information and the protection of personal data, article 6, subsection A, section VIII, determines that for the appointment of commissioner of the autonomous body (specialized, impartial, collegiate, with legal personality and own assets, with full technical and managerial autonomy, ability to decide on the exercise of its budget and determine its internal organization) responsible for ensuring compliance with this right, the Chamber of Senators will appoint him, after carrying out a wide consultation with society, to proposal of the parliamentary groups, with the vote of two-thirds of the members present. Regarding the broadcasting and telecommunications sector, the appointment by the Senate of the Republic of the honorary advisers that will make up the Citizen Council of the Public Broadcasting System of the Mexican State, Article 6, subsection B, section V, establishes

¹¹ La protección a este sector que es ampliamente abordada por la Organización Internacional del Trabajo (OIT) (1989). *Manual para los mandantes tripartitos de la OIT* (vol. 169), así como por la Oficina Internacional del Trabajo (2016). *Procedimientos para la celebración de consultas con los pueblos indígenas. Experiencia de Noruega* (1.ª ed.). Ginebra, Suiza:

¹² Desde una perspectiva jurisprudencial y para profundizar en su estudio, se sugiere consultar TEPJF, T. E. (2014). *Democracia igualitaria. Criterios jurisprudenciales para la equidad de género y la inclusión de comunidades indígenas* (T. Coordinación de Comunicación Social, Ed.) México: Tribunal Electoral del Poder Judicial de la Federación.



that must carry out prior application of a broad public consultation. Regarding democratic planning, Article 26, subsection A, stipulates that the law will empower the Executive to establish the procedures for participation and popular consultation in the national system of democratic planning, and the criteria for the formulation, implementation, control and evaluation of the development plan and programs. The rights of the citizen to vote in popular elections, to be able to be voted for all positions of popular election; and voting in popular consultations on issues of national importance are protected respectively by sections I, II, and VIII of article 35. Regarding the topics exempted from the application of popular consultations, the aforementioned section VIII of article 35 establishes that the restriction of human rights recognized by this Constitution, the principles enshrined in article 40 of this Constitution, may not be the object of popular consultation. , the electoral matter, the income and expenses of the State. National security and the organization, operation and discipline of the permanent Armed Forces, conferring on the Supreme Court of Justice of the Nation the power to decide, prior to the call made by the Congress of the Union, on the constitutionality of the matter of the query. The obligation of the citizen of the Republic to vote in elections and popular consultations is established in section III of article 36. Regarding the exercise of popular sovereignty, Article 39 specifies that this right resides essentially and originally in the people, and that all public power emanates from the people and is instituted for the benefit of the people, who at all times have the inalienable benefit of altering or modify the form of their government. Regarding the form of government, Article 40 is forceful in underlining that the will of the Mexican people is to become a representative, democratic, secular and federal Republic, made up of free and sovereign States in all matters concerning their internal regime, and by the Mexico City, united in a federation.

The bases for the renewal of the Legislative and Executive powers through free, authentic and periodic elections are set by article 41. The powers of the Congress of the Union to legislate on citizen initiative and popular consultations, as well as to issue general laws that distribute powers between the Federation and the states in matters of political parties; Electoral bodies and electoral processes are conferred in accordance with sections XXIX-Q, and XXIX-U of article 73. Regarding the public consultation procedure to be followed for the election of the head of the presidency of the National Human Rights Commission, as well as the members of the Advisory Council, and of heads of the



organizations for the protection of human rights of the states, the same is provided for by subsection B, article 102.

The Federal Law of Popular Consultation

The fundamental object of the Federal Law of Popular Consultation (March 14, 2014) is to regulate the procedure for the convocation, organization, development, calculation and declaration of results of the popular consultation and to promote citizen participation in popular consultations (articles 1 2 and 3). This ordinance conceives popular consultation as a “participation mechanism by which citizens exercise their right, through the vote cast by which they express their opinion regarding one or more issues of national importance” (Article 4). Only issues of national significance are those that fall under the rule of popular consultation, and their qualification corresponds to the majority of legislators present in each Chamber, except for the consultation that arises from the citizen proposal where the relevant character is resolved by the Supreme Court of Justice of the Nation (article 5), and the parameters for determining relevance are (i) that they affect most of the national territory and (ii) that they impact a significant part of the population (article 6) . One aspect to be highlighted is the binding nature of the popular consultation, and this is only presented when the total participation corresponds to, at least, forty percent of the citizens registered in the nominal list of voters (Article 5). Regarding issues exempted from popular consultation, the restriction of human rights recognized by the Political Constitution of the United Mexican States is abstracted from this consultation mechanism; the principles enshrined in article 40 of the Political Constitution of the United Mexican States; electoral matters; the income and expenses of the State; national security, and the organization, operation and discipline of the permanent Armed Forces (Article 11). As for the request for popular consultation itself, it is limited to the President of the Republic; to the equivalent of thirty-three percent of the members of any of the Houses of Congress, or to the citizens in a number equivalent to at least two percent of those registered in the nominal list of voters (Article 12).



Feasibility that the Mexican public consultation regime allow its regulation and exercise effectively and efficiently

To verify this feasibility, we must undertake the analysis of the transition from a participatory democracy to a justifying democracy. Coinciding with the criterion of Peña (2009) - due to his conceptual analysis in the space of dictatorship, democracy and the republic (particularly in relation to other types of democracy) - it will hardly be possible to consider public consultations as the panacea for democracy, at least not in the way they are regulated and applied in Mexico. Next, the opinion of the author quoted when referring especially to participatory democracy and justifying democracy. He does not stop recognizing Peña (2009), and in fact marks even scathingly the accent, in a series of inconveniences of the implementation of participatory democracy: its ambiguous and sometimes non-existent rules of application in the factual plane (in addition to the imprecise in terms of considering it as complementary to or substitute for direct democracy), which further polarized power, since it ends up relegating a large unknown population conglomerate by preponderance of the weight of organized citizenship, of professionals in the lobbying, the eloquent, influential and even vociferous, and that there is a risk of reaching the concentration of factual power by virtue of those who hold it to increase the chances of forcefully applying their dominance. Faced with the questioning of the effectiveness in the adoption of participatory democracy, Peña (2009) sensibly warns of the need to identify a new alternative that he calls justifying democracy, which is explained with the adoption of correct decisions that justifiably demonstrate respect for values consecrated as supreme by the predominant population, which will suppress any trace of injustice, since the voter will assume the responsibility of justifying the sense of his determination. In this model of justifying democracy, the voter himself has to justify his vote. According to Peña (2009), there are five characteristics of the proposed model: any determination must be fully justified, including or mainly the vote; adequate electoral procedure according to public opinion; suppression of unjustified powers that be (both majorities and minorities); control of pluralism, and reliably document the assumption of commitments.

Sharing the criteria of Sáenz and Rodríguez (2010), it can be considered that in participatory democracy, citizens must remain in permanent activity supported by information that makes them make rational determinations, both with regard to the choice of their candidates and in their active participation in representation functions. The development



of a true political culture, the exercise of public debates and the application of public consultations will allow the conjunction of different points of view, which will give a possibility of reaching a sufficiently argued consensus. It is precisely for this reason that when evoking the democratic ideal in the chapter devoted to the democratic conception of education, Dewey (1998) admits the existence of conductive means towards the correct path of democracy:

The two elements of our criterion are directed towards democracy. The first means not only more numerous and more varied points of interests shared in common, but also the recognition of mutual interests as a factor of social control. The second means not only a freer interaction between social groups (previously isolated where the intention can maintain a separation), but also a change in social habits; its continuous readjustment facing the new situations produced by the varied exchange. And these two features are precisely those that characterize the democratically constituted society (p. 81).

Discussion

To explain the discussion of the results of this research, we prepared a table of our own that specifies (i) the meaning of the findings; (ii) the response of the findings to the research question and hypothesis; (iii) limitations to the study of public consultations; (iv) the influence of the findings on the results; (v) the relationship of the findings with previous studies; (vi) the implications of the study for researchers, practitioners, or policy makers, and (vii) suggestions for future research based on the findings.



Tabla 1. Discusión de los resultados

1. Significa- do de los hallazgos	Respues-ta de los hallazgos a la pregunta de investigación o hipótesis	Limitaciones al estudio de las consultas públicas	Influencia de los hallazgos en los resultados	Relación de los hallazgos con estudios realizados anterior- mente	Implica- ciones del estudio para investiga- dores, practicantes o legislado- res	Sugeren- cias para futuras investiga- ciones basadas en los hallaz-gos
<p>A). Se identificaron (i) los sustentos jurídicos, filosóficos y sociológicos de los derechos humanos (Nogueira, 2003; Alexy, 1997; Ferrajoli, 2004); (ii) la historicidad de la democracia, y (iii) el origen de los soportes normativos de las consultas públicas en México.</p> <p>B). Se conocieron los postulados del marco teórico inherente a los derechos humanos, la democracia, y las consultas públicas (UIP, 1997; ONU, 2013-</p>	<p>Se confirma la siguiente hipótesis: la democracia es un principio elemental de los derechos humanos, y responde a la pregunta de que las consultas públicas son una de las formas de acercar la democracia al colectivo social, pero su legitimación depende de la debida regulación de los resultados.</p>	<p>Se refieren preponderantemente al aspecto dogmático sin que hubiere resultado factible: identificar estudios sobre su aplicación pragmática que develen numéricamente su grado de eficacia y eficiencia.</p>	<p>A). Permitieron identificar las bases normativas, filosóficas y sociológicas de los derechos humanos, la democracia y las consultas públicas.</p> <p>B). Facilitaron la comprensión de los postulados de la Declaración Universal sobre la Democracia; la consulta recíprocamente vinculante y el análisis económico del Derecho.</p> <p>C). Auxiliaron en la conformación de un marco conceptual de los derechos humanos, la</p>	<p>La mayor parte de estudios sobre consultas públicas se atribuyen a instituciones de derecho público tanto nacionales como internacionales, o autores auspiciados por ellas (ONU; BID; CEPAL, CNDH; ITEL; B. de M.; COFETEL; Centro Mexicano de Derecho Ambiental, A.C.; Cámara Suizo-Mexicana de Comercio e Industria, A.C.; INE, Congreso de la Unión, etc.).</p>	<p>Les permitirán la comprensión de los fundamentos de los derechos humanos; el concepto y evolución de la democracia para establecer si esta es contenido esencial de aquellos, si su inclusión posibilita la satisfacción de una necesidad real, o su omisión o ausencia tiene implicaciones negativas para el correcto y óptimo desarrollo y progreso de la vida social, pretendiendo determinar si es a través</p>	<p>Enfocar la atención en el estudio del modelo de la democracia justificativa.</p>

<p>2019; Tilly, 2007; KASS, 2011; Coase, 1960; Cooter y Ulen 2016; Cossío 2015; Calabresi (1970).</p> <p>C). Se conformó el marco conceptual propio de (i) los derechos humanos; (ii) la democracia; (iii) la participación, y (iv) las consultas públicas (Capellán de Miguel, 2018; Boutros-Ghali, 2003; Bovero, 2012; Dewey, 1998).</p> <p>D). Se conoció la regulación de las consultas públicas a partir de los supuestos contenidos en (i) la Constitución Política de los Estados Unidos Mexicanos y (ii) la Ley Federal de Consulta Popular (mecanismo</p>			<p>democracia y de las consultas públicas.</p> <p>D). Permitieron localizar en la Constitución Federal los supuestos de las consultas públicas y la comprensión de la Ley Federal de Consulta Popular.</p> <p>E). Coadyuvaron en la conformación de conclusiones y formulación de la propuesta de la democracia justificativa.</p>		<p>de las consultas públicas que se acerca el derecho humano de la democracia a la sociedad.</p>	
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<p>de participación en temas de trascendencia nacional). E). Se concluyó que (i) las consultas públicas no son la panacea de la democracia; (ii) existen inconvenientes en la democracia participativa, y (iii) se propone el modelo de democracia justificativa (Escobar, 2014; Fernández, 2013; García, 2008; Hernández Valle, 1990; IDEA, 2017; Milano y Zanhueza, 2016; Prud'homme, 2016; Sáenz y Rodríguez, 2010; Sartori, 2009).</p>						
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Fuente: Elaboración propia



Conclusions

The legal nature of the public consultations was identified in a duality, since they were conceived not only as a right, but also as an obligation, which is given the treatment of a variable of the democratic exercise, admitting, in addition, the possibility of resembling the terms public consultation and popular consultation. Public consultations are conceptualized as a modality of putting into exercise the rights of democratic participation that serve as an instrument of active search for the contributions of citizens and organized groups with respect to relevant issues of a country, whose usefulness consists of bi-directional feedback in order to legitimize and understand the decisions adopted based on the identified needs and focused priorities, thereby fostering the confidence of citizens by having the opportunity to discuss, plan and decide on the issues subject to consultation, with the understanding that their effectiveness and efficiency will depend on the existence and adequate execution of the respective operational plan. Likewise, it was feasible to determine its scope or effects when dealing with issues of national significance, although the mechanics to verify the relevant nature of a topic subject to said instrument is questionable. Its advantages lie in legitimizing and understanding the determinations made with the support of the focused needs and established priorities, which fosters the confidence of citizens, who have the alternative of participating in discussion, planning and decision-making tasks.

Its drawbacks were made visible by corroborating the inexistence of an adequate operational plan and the absence of a uniform regulation that concentrates each and every one of the matters under consultation, since the special legislation that regulates them is ambiguous and generic as far as treatment of issue of national significance is concerned. In fact, it is limited to establishing only the topics that escape its application, thereby allowing a fairly wide margin of discretion both in the breadth of topics and in their development and weighting of results, which favors their manipulation by the convening entity and the very determination of the transcendent character of a topic under consultation. On the other hand, it was found that the Mexican legal system does not have adequate normative regulations applicable to topics specific to said consultations due to the reasons set forth in the previous conclusions. Therefore, it is irrefutably proven that, given their negligible degree of effectiveness and efficiency, it is not feasible to guarantee them an encouraging future.



Future Research Lines

Issues have been identified that deserve to be addressed in complementary and subsequent studies, by virtue of not having been foreseen at the time when the original bases of this research were designed. A topic potentially susceptible to in-depth analysis through the articulation of a line of research is the one related to the model of justifying democracy based on the contributions made by authors such as Lorenzo Peña (in his conceptual analysis on dictatorship, democracy, and republic or with relation to justifying democracy as a new model of Republic) or Jessica Baños (according to her research on current debates around theories of democracy) in order to verify its advantages and disadvantages compared to the traditional scheme of elective democracy, pretending to corroborate the existence of a true complementarity based on the proximity between the power exercised by organized citizens and the subjects with claims to display representativeness, and if it would achieve a genuine increase in the participation of decision-making wills based on unrestricted responsibility. Another aspect of great relevance, with prospecting and feasibility of being inquired in a future line of research, is related to the design and application of public consultations, as well as the methodology of interpretation, validation and weighting of the results obtained through this a mechanism for democratic expression and participation, which would most likely lead us to the creation of a universal model for public consultation, inspired by examples such as the one provided by the Chilean Transparency Council; by Flavia Milano and Andrea Sanhueza through their proposal of Guides for Public and Private Executing Agencies of Public Consultations with Civil Society, or by the Inter-American Development Bank Group that gives us the step-by-step of public consultations through 300 regulatory and legal frameworks applicable in Latin America and the Caribbean.



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