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An Introduction to an Analysis of the Macro and Micro Legal Aspects and Public Policies

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Abstract

This text seeks to identify, correlate and distinguish legal situations that differ within the scope of the standardized *object*. When the object of the legal analysis is the regulation of an *activity*, the issues are to be considered macro-legal ones; therefore, when the object to be analyzed is the direct relation between individuals, the issues are to be considered micro-legal ones. This generates different consequences in the legal relations considered. It correlates with the implementation of public policies, which will always be analyzed from a macro-legal point of view, as it seeks to regulate an activity. This analysis is still under construction and is the result of other works already concluded.

Keywords

Macro-Legal, Micro-Legal, Public Policy, Theory of Law

1. Introduction

This paper seeks to identify, correlate and distinguish different situations in the legal universe, and their consequences, and presents them for debate within the academic community, as it is the result of analysis concluded in other studies[1] that are hereby amplified.

As in other areas of knowledge, it is understood that micro and macro analysis takes place in the legal world, as it can be seen, for example, in Economics. The difference resides in the *object* to be analyzed. In micro-legal issues, the object

[1]An essay on the subject was published in the book *Supremos Acertos* (organizers: Scaff, 2022b) under the title *Ensaio sobre o macro e o microjurídico, a macro e a microjustiça e a macro e microlitigância* (Scaff, 2022b, pp. 216-225). Another focus on the theme could be found in the book *Da Igualdade à Liberdade – Considerações sobre o Princípio da Igualdade* (Scaff, 2022a, pp. 45-66). The matrix of this reasoning can be found in: Scaff, 2018, Orçamento Republicano e Liberdade Igual: ensaio sobre direito financeiro, república e direitos fundamentais no Brasil. Fórum Comparato (2014).

under analysis is the relationship between individuals, from an isolated perspective, while in macro-legal issues, the search is for the regulation of an activity directed to a diffuse scope of individuals, the components of society or fractions of it.

This distinction is proven useful for the legal analysis, as it will be seen, with important consequences for the search for *distributive* justice (here identified as macro justice) and commutative justice (which is identified as micro justice), with only the second being characterized as an area preferably for the Judiciary branch. Macro-justice is more easily achieved through the work of the Executive and Legislative branches, responsible for formulating and implementing public policies.

2. The Macro and the Micro-Legal Level

2.1. The Distinction Arises from the Object under Analysis

The distinction between the macro and micro perspectives is common in several sciences, such as Exact Sciences, especially in Physics, when *macro-physics* is studied, and involves theories such as the General Relativity, and *micro-physics*, regarding a set of topics that are not visible to the naked eye, such as subatomic particles. In Life Sciences, Biology uses the expressions *macro-biology* for the study of large living organisms, and *micro-biology* for the study of microorganisms. Even in *Social Sciences* there is the classic book by Michel Foucault called *The micro-physics of power*, where he analyzes interpersonal relationships involving small areas in which such power is exercised, unlike what happens in the *macro-physics* of power, which is relevant to large institutions such as governments and the Church. Such a distinction is also common in *Economics*, where the use of such expressions as *microeconomics* and *macroeconomics* has been long consecrated.

Esteban Cottely (Cottely, 1971: p. 132), a scholar of Economic Law, upon distinguishing that "*property has an individual character*", while "*currency as an object of legal regulation, has a collective character*", considered it convenient to use the same differentiation of Economics in Law, "*establishing clear distinction between macro-legal and micro-legal institutions or structures*".

Cottely points out that many will be astonished by this unusual nomenclature, but he considered it necessary to make the distinction, since "*the manifestations of micro-events have a different character from those of macro-events*", and continues to present differences between the search for a wage increase by a worker, and the possibility of increasing the national salary levels, and also between the purchase of a house by an individual, and the real estate credit system.

The author himself opposed to his reasoning the traditional argument that there is only one justice, and that "*what is valid for an individual is also valid for a group of them*", and that there cannot be two or more justices.

Against the argument opposed by himself, Cottely stated that there are many examples to prove that "*certain legal norms, applied to a smaller number of in-*

dividuals, *are completely distorted in relation to the larger assemblage*". He said that "*none of the norms that facilitate the distribution of a certain right or advantage can be applied without distinction*". Among his examples it stands out that of someone who wants to send money abroad through an exchange, and despite this being a right of the individual, it is subject to the existence of enough foreign currency in the central bank, which can have different priorities, quotas etc.

Updating the examples, it is possible to identify differences between the right of individuals not to be vaccinated against Covid, and the right of the entire society to health and not to be infected by those who refuse to be vaccinated. Or yet, the interdiction of driving under the influence of alcohol, which protects the life of the driver himself, but also that of everyone else around him. It is clear right away that there is an opposition between public policies of vaccination or traffic protection and the right of individuals directly expressed by each person considered individually.

Cottely concludes by mentioning that the micro and macro legal investigation intends to clarify the influence of micro and macroeconomics on economic law, which is its object of study (Cottely, 1971: p. 134). However, as can be seen, it is possible to employ such concepts on other areas of law as highlighted by Eros Grau (Grau, 1981: p. 31).

Geraldo de Camargo Vidigal stated that financial laws "*often take on the character of macro-juridical norms*, *which discipline the global capacity – of work*, *production*, *income*, *consumption*, *savings*, *investment – affecting each individual*, *each company and the state itself*" (Vidigal, 1977: pp. 135-136). In another work, Vidigal establishes that Economic Law is the *macro-discipline of economic behavior*, distinguishing its field of action from that of Private Law, which operates "*prevalently inspired by the preservation of individual interests*", while Economic Law "*is the legal discipline of activities carried out in the markets that intend to organize them under the dominant inspiration of social interest*" (Vidigal, 1977: p. 213).

Gilberto Bercovici and Luís Fernando Massonetto also use the expression *macro-legal* to link it to a perspective of economic law when dealing with the ordering of economic processes, or the legal organization of accumulation spaces (Bercovici & Massonetto, 2009: pp. 137-147).

Eros Roberto Grau advances on the analysis of the term. It deals with the subject by conceptualizing Economic Law as the "normative system aimed at ordering the economic process through regulation, from a macro-legal point of view of economic activity so as to define a discipline destined to enable the implementation of the state's economic policy" (Grau, 1978: p. 218). Later on, he deepened his analysis (Grau, 1980: pp. 19-25; Grau, 1981: pp. 26-31) and exposed the distinction between macro and micro-legal aspects and pointed out that it is not a "simple variant" between the concepts of individual interest *versus* immediately protected social interest, being something different from this imbrication, and indicated three distinctive criteria: 1) regarding the *object* to

which the norms are directed, since in the micro scope the norms are directed to individuals, and in the macro scope, to a group of subjects; 2) also regarding the subjective element of the norm, because in the micro the subjects of law are concerned to the subjects of the law, while in the macro *the exercise of certain activities* is concerned; and 3) finally, with regards *to the position subjects adopt towards the norm*, since in the micro scope it presupposes prior definition of the subjects whose protection is referred, while at the macro level this occurs for *ordering an activity*.

The three criteria pointed out by Grau can be summarized in the criterion of the *object* to be regulated: if the legal relations to be regulated intend to reach the relations between identified individuals it will be a micro-legal scope; if it is the exercise of an activity, it will be a macro-legal scope. The *subjects*' identification criteria (criterion 1, Grau) is confused with the object to be regulated. And the *position subjects adopt* towards the norm (criterion 3, Grau) is a consequence of the regulated object.

For the macro-legal analysis, it should be understood that "*activity*", according to Comparato, is a series of acts tending to the same scope, which encompasses both legal acts or transactions, as well as simple material acts. "The ability to perform acts differs from the ability to carry out an activity. The former can be absolute or relative; the latter is always absolute. There are no people relatively incapable of exercising a given profession. On the other hand, the regime of validity of isolated acts differs from that of an activity: in the first case, nullity and nullability are distinguished; in the second one, we more properly talk about regularity or irregularity" (Comparato, 1983: p. 93). The analysis carried out by Comparato is very useful as it distinguishes the two areas, that of an *activity*, which is in the regular/irregular prism, with the individualized analysis referring to the theory of capabilities and that of nullities being negligible for this area.

In this sense, and taking advantage of the distinction made by Comparato, it can be reaffirmed that the macro-legal perspective involves regulation for the exercise of an *activity*, while the micro-legal perspective involves the relationships between individuals.

A contemporary example can clarify along the lines of what Cottely explained: imagine a public Housing Program that intends to build houses for the low-income population through the financing of civil construction activities, and it is considered a public housing policy in which macro-legal instruments are necessary for its analysis; notwithstanding, it is also necessary to carry out a micro-legal analysis regarding the individuals who will take decade-long compromise mortgages in order to purchase the houses. If we isolate the micro and macro perspectives, the possibility of failure is enormous, hence the need for different types of financing, on the one hand, for the construction of housing project, and on the other hand for the low-income buyers, who certainly will need credit instruments, collaterals, and subsidies to handle an intergenerational debt. These are different point of views which are interrelated.

It should be noted that the fundamental right to housing could be implemented in different ways, either through public policies aimed at the *social leasing* of houses with the political option of building new houses and offering them to the low-income population as a way of dynamization of the economy, or through Keynesian style economic policies, which once again connect the macro and microeconomic analysis with the proposed macro and micro-legal analysis.

Thus, the use of these concepts is useful and instrumental for the legal analysis, the *object* of which can be at a micro-legal level so as to cover individual issues, or at a macro-legal level whenever a given activity is concerned.

It is not just about different angles or perspectives, but truly different *objects* of analysis, which are distinct, although connected to each other, and this makes the analysis more complex since human beings are in both universes, macro and micro ones.

Individuals coexist between the legal norms established in these two levels, micro and macro legal aspects. They coexist with the norms that regulate activities aimed at the level of social coexistence, which is why they are inserted in a macro-legal context, but they also coexist with the norms that prescribe conduct for individual relationships, which regulate the relations between the individuals considered in isolation.

There are two levels of human coexistence and normative regulation: the macro-legal level, aimed at the regulation of *activities* considered globally and socially, and the micro-legal level, aimed at the regulation of individual relationships.

2.2. The Distinction between Public and Private Law

This distinction between micro and macro *does not* correspond to the ancestral separation between public and private law as since the nationalization of private law in the Napoleon Code one of the most difficult things is to identify within the legislation what is public law and what is private. Before the age of codifications, what had been established between private parties was private, without the law to determine it, as taught by Francesco Galgano, for whom the concept of private law meant, before the French Revolution, the global antithesis of civil society to the State-apparatus (private law regulated relations between individuals, which were foreign to the State), as well as with regard to the State-ordination (civil society had its own sources of law, separate from the State).

From then on, private law was established within the State; its difference with public law is established within the State-ordination, in a "*continuum*" within which the diverse nature of norms, whether public or private, is speculatively fixed (the criterion for distinguishing both parts of law will be one of the most arduous problems of legal science) (Galgano, 1980: p. 93). *Before* the Napoleon Code, customary norms were considered private law; and all norms produced by royal (state) ordinances were public law. *After* that Code, customary law was degraded in importance and only used as a supplement to the state's normative

emanation. Thus, both public law and private law came to be emanated from the State.

The macro and *micro* dyad can be used in the legal field in analyzing any legal relations, either between private persons, public persons, or even transversally between public and private persons.

Therefore, the distinction between macro and micro-legal level is not equivalent to the dyad public law *versus* private law, but refers to the object under analysis.

2.3. The Distinction between Liberal and Contemporary State

Nor can it be considered that the micro-legal is a matter of the Liberal State, and the macro-legal of the Welfare State. The proposed perspective does not go through this classification, although the liberal logic presupposes that social is the simple gathering of individuals. There is a famous quote attributed to Margaret Thatcher: "There is no society, only individuals".

The analysis divided into isolated individuals can be well observed in the work of Henri-Benjamin Constant de Rebecque (1767-1830) who in 1810 published the book *Principles of Policy Applicable to All Governments*. He was an acid critic of Rousseau, especially of his conception of *the general will* anchored in the people, and a stalwart defender of individual freedoms. In this book are the central ideas of a famous speech that he gave in 1819 entitled "*The Liberty of the Ancients Compared to that of Moderns*". All the arguments exposed there were in the sense of the inadequacy of the attempt to institute the ancient system of freedoms in a modern context, and the perversion generated by this fact. Hence, individual freedoms reflecting individual rights would be sacrosanct, even in the presence of popular will (Capaldi, 2007: p. 31).

Henri-Benjamin Constant outlines several differences between the freedom of the ancients and that of the moderns, the most relevant being the finding that the ancients constituted citizens with political participation in the *polis*, while for the modern's freedom is reflected in individual freedoms, this because of the increase in population and size of modern states territories. The author says that (Constant, 2007: p. 596):

> Liberty in ancient times was all that guaranteed citizens the highest portion of political power. Liberty in modern times is all that guarantees citizens independence from government. […]. Modern people need tranquility and satisfaction in different forms. Tranquility is found only in a small number of laws that keep them from being disturbed, and satisfied in extended individual liberty. Any legislation that demands the sacrifice of these satisfactions is incompatible with the present state of the human race.

His idea was to expand the sphere of individual freedoms, making the general will only residual, and the result of the sum of individual wills. The misrepresentation of Rousseau's ideas, which culminated in the dominant assembly during the French Revolution, caused Benjamin Constant's reaction to be exacer-

bated by individualism in the logical sequence of the economic ideas advocated by Adam Smith.

In this sense, it is through the individual that public freedoms would become permanent, breaking up the general will, that would be reduced to just a few initiatives, and letting the free hand of the market and individual rights prevail. Public needs would be met by fractionally considered individuals, and not by a decision based on social interest.

There is no doubt that the fractional logic of the Liberal State leads to micro analysis in view of the atomization of the social will in the pursuit of the common good, but the distinction between the macro and micro perspectives is not equivalent to this model of state organization.

2.4. Distinction among Legal Disciplines

It is understood that the distinction between macro and micro legal aspects is connected to the analysis of the object of the norm. If it concerns the regulation of an *activity*, there will be a macro-legal perspective; if it is related to the relations between individuals, there will be a micro-legal perspective.

This differentiation does not result only from the different forms of its enunciation nor from its characterization in composing a specific legal discipline, organized in a traditional way.

It can be seen, for example, that the simple distinction between *individual* labor law versus collective labor law does not directly and necessarily imply the distinction that is now outlined between macro and micro legal aspects as there may be rules referring to the *prior notice* discipline that according to the traditional classification refer to individual labor rights, but due to their *object* they may end up regulating a certain activity and composing the macro-legal scope; while collective work norms may establish individual prescriptions, such as the installation of a certain number of bathrooms for each group of workers in a given company.

An identical situation occurs in other legal disciplines organized in a traditional way. From a micro-legal point of view, the *tax* rule can be observed in relation to each taxpayer that is reached by its provisions and it must be individually analyzed if such incidence gives rise to the obligation to pay a certain duty. In this case, the object to be analyzed is the relationship between taxpayers considered individually and that specific normative incidence. However, it is possible that the same tax rule consists of a set of economic policies, including extra-fiscal aspects as seen in the use of import duties on foreign products to protect the domestic market, or even in the design of a system that excessively burdens payrolls, which will lead to the loss of jobs in such cases, the object to be analyzed is an economic rule that will be therefore characterized within a macro-legal scope.

The same observation can be made with regard to *public financial* rules. Establishing that payments made by the State must occur through commitment and liquidation is an object of micro-legal analysis as it involves rights and du-

ties between suppliers and the public administration. The determination of the government procurement *policy*, whether exclusively from domestic suppliers, or allowing the participation of foreign companies, is a macro-legal determination—its object is an activity, a government policy.

In the same sense, establishing health *policies* for handing out drugs at subsidized prices is a macro-legal issue, while the effective dispensing of such drugs in each health unit is a micro-legal one as it involves the demand for each type of medicine for each health unit.

The public budget is the best synthesis of a macro-legal instrument, as its object is a legal regulation of the collection, spending and debt of the State during a given period, but such norm generates micro-legal impacts as it entails individualized relationships with the different economic agents under the provisions contained therein, from individual public servants to large suppliers to the government.

The same distinction can be applied to *civil law* that has the object of regulating an activity, for example, the civil union of same-sex people, a macro-legal decision with undeniable micro-legal impacts on the lives of people in general, alongside the macro-legal effects of various orders such as on the social security and registry systems.

The same occurs in regulating *property*, which has a macro-legal scope aimed at regulating its social function in comparison with the provision to determine its externalization only through the proper registration with the relevant notary offices, a micro-legal scope.

This can also be seen in *consumer law*, almost always focused on individualized relationships between suppliers and consumers, and its correlation with *competition law*, a macro regulation scope, although also individually focused on each company.

All of this points to an undeniable difference between the traditional way of organizing the legal subjects and the macro and micro legal analysis presented here, as it is common to have transversal impacts on different areas of legal knowledge, such as tax policies (macro) in the competition between specific (micro) companies, which is very common in jurisdictions where *tax warfare* is on, whether domestic (as in Brazil) or international.

It is also seen in the policy from criminalizing tax conduct, with a strong impact on the procedures for individual taxpayers.

It is also seen in the judicial search of medicines and treatments that are not including in the funding by the public health system. Observed under a micro lens, an *individual* issue is identified in the right to health or life; observed under a macro lens, there are aspects of global expenditures with the provision of the public health service, and in such case the object under analysis is certain activity not directly related to a specific individual.

2.5. A Theoretical Source for This Distinction and the Justices

A theoretical source for understanding the distinction between the macro and

micro can be found in Aristotle's phrase written more than 2500 years ago: "*the whole is greater than the sum of its parts*". And it ends (Aristotle, 2009b: p. 16):

> The whole must necessarily be placed before the part. […] He who cannot live in society, or who needs nothing because he is self-sufficient, does not belong to the State; he is a brute or he is a god. Nature thus compels all men to associate.

This may seem strange in mathematics, for example, where it is absolutely true that two plus two equals four. In other areas of knowledge this phrase happens to be fully adequate. As an example, let us use a chair (the *whole*) that is much more than its four legs, seat, and backrest (the parts), or a forest, which is much more than a group of trees or plants, as it is characterized by the diversity of species. Each *part* has its own function independent of another function that arises when put them together as a whole. In this sense, a tree isolated in a square or in the backyard of a house fulfills a different function from that when it is together to other plant species, when *it may become* a forest. Thus, a soy or eucalyptus plantation does not constitute a forest, although they are a collection of the same plant species.

It must be considered that the *whole* is greater and, very importantly, it is also different from the sum of its parts.

Another important aspect to consider is that depending on other variables the result of putting the *parts* together may generate a different whole when one analyzes *who*, *when*, *where*, *and for what purpose* those parts are put together. Thus, the combination of legs, seat, and backrest (the *parts*), if used by a famous designer such as Ludwig Mies van der Rohe, may result in a more valuable chair (the whole). Examples can be multiplied endlessly.

This analysis between the *whole* and the parts, and the different possibilities resulting therefrom in view of the variables mentioned (who, when, where and for what purpose), demand great caution when applied to human relations as the solutions generated in a given society cannot exactly applicable to others. This problem comes up if foreign legal models are imported to solve domestic problems, since law is the result of the dynamics of social and cultural relations of a society, and the successful solutions found in one are not always applicable to others, as the *parts* of a society are different and may generate a different whole to which such situation is not applicable.

A scope of analysis in which the distinction between macro and micro-legal can be used concerns the pursuit of Justice, and for that some ancestral concepts on the subject are resumed.

The debate about *commutative justice* and *distributive justice* runs through the centuries. Aristotle, in his Nicomachean Ethics, dealt with this subject in the fourth century before Christ.

Commutative justice, which Aristotle calls *corrective*, applies to transactions between individuals (Aristotle, 2009a: p. 108). This must observe the principle of

equality, not the geometric, but the arithmetic one. In this case "the law only looks at the specificity of the damage, and treats everyone equally". "The judge is able to restore equality" (Aristotle, 2009a: pp. 110-111) *Commutative justice* exists to give each one what is his, according to ancient lessons of law. Thus, if A owes B the delivery of some *goods*, B has the right to have such goods from A, be it real estate, money, or any goods. Here, there will be a *commutative* relationship between A and B. and the Judiciary must guarantee the right of B before A, such relationship being individually considered.

Distributive justice is the one having "its field of application in the distributions of honor or wealth, and everything that can be distributed in parts among the members of a community (in fact, it is possible to distribute all this in equal or unequal parts by some and by others)". Thus, "if people are not equal, they will not have equal parts, and this is where many conflicts and complaints come up, as when equal people have and share unequal parts or unequal people have and share equal parts" (Aristotle, 2009a: pp. 108-109).

Distributive justice is "a kind of proportion" and "as the fair is the means, so the just is the proportional". According to Aristotle, we here are dealing with what mathematicians call *geometric proportion*, different from *arithmetic proportion*, typically *commutative justice*. And it ends: "Fair, then, in this sense is the proportion. As the opposite option, unfair is everything that violates the principle of proportion". This being "one of the fundamental forms of justice" (Aristotle, 2009a: pp. 109-110).

The philosopher also says about *distributive justice* that "although it appears to be identical in its entirety, the way of violating the principle of proportion is different. Regarding the injustice done, suffering it is the lesser of evils; but practicing it is the greatest" (Aristotle, 2009a: p. 115).

And it concludes about *distributive justice* (Aristotle, 2009a: p. 116):

> To practice injustice is to keep too much of what is considered absolutely good and not to keep too much of what is considered absolutely bad.
> This is the reason why a human being cannot govern, but rather the general principle of a written law (…).
> Now, the ruler is only the guardian of justice, and if he is the guardian of law, he is also the guardian of equality. […]
> That is, the ruler works on behalf of others. For this reason, it is said that justice is the good of others.

Distributive justice is a characteristic of government relations, with the budget being the appropriate place to carry out this type of action, since ideally taxes are collected from everyone and distributed for the benefit of all, which should occur unevenly in proportion to the needs and intending to make everyone equal for exercising their freedom.

The object of *distributive justice* is the *common good*, *something diffuse*, *macro justice*; the object of *commutative justice* is the *individual good*, something identified, the object of *micro justice*. Such considerations are correlated with

the micro and macro legal concepts as previously exposed.

Distributive justice is primarily a political issue laterally economic and residually legal.

The logic of *commutative justice* is correlated with the micro-legal scope, that is, the search for the exact correlation between what one person has and what the other is to receive. If a right is violated between individual parties (micro-legal scope), its exact correlation with other equivalent right will be sought to remedy such violation. As the name of this type of equivalence indicates, it is *commutativity* – one thing is exchanged for its equivalent.

The logic of *distributive justice*, on the other hand, is correlated with the regulation of an activity (macro-legal scope), since it starts from the conception of the redistribution of goods and rights, an essential condition for the expansion of freedom, as only with the reduction of inequalities and respecting differences is that equality will be achieved. *Distributive justice* does not only concern the distribution of wealth, but also the fair distribution of rights, which is equivalent to saying isonomy in their access and fruition – in short, it regulates the exercise of an activity.

Therefore, the logic of *commutative* justice is considered much more correlated to the micro-legal scope, and consequently the scope of micro-justice; and distributive justice is closer to the macro-legal scope, and therefore to macro-justice, understood as the adoption of global, universal solutions reaching all those involved.

This statement reflects in the scope of *public* policies, correlating them with the search for distributive justice, which leads us to macro and micro legal analysis.

3. The Public Policies Inserted in the Macro Legal Level

The concept of public policies is related to that of regulating the exercise of an *activity*, which points to macro-legal issues and has an obvious impact on micro-legal relations, as one sphere is not separated from the other, since in both areas the individual is the center of attention, differing only in the normative object, if an activity or interpersonal relationships are regulated.

Public policy can be understood as a duly structured and coordinated government action or program to achieve a purpose established by society. It is the regulation for exercising a certain activity that is to comprise a series of acts within the same scope, which encompasses legal acts or transactions, and simple material acts.

The elaboration of public policies is not the mere enunciation of a legal norm, as according to Ronald Dworkin: "Arguments based on principles aim at establishing an individual right; political arguments are intended to establish a collective objective. Principles are propositions that describe rights; policies are propositions that describe goals" (Dworkin, 1989: p. 158).

A *policy* is not an individualized proposition, that is, something that generates

rights for specific individuals, but aims at producing global actions within the community, which is why it is something to be analyzed from a macro-legal perspective, as it regulates the exercise of activities. Policies arise at the intersection between principles and rules, to use Ronald Dworkin's classification that inserts "policies", or political guidelines as a sort of norm that proposes an objective to be achieved, usually some economic, social improvement, or policy for a certain community, even if it is in the negative sense to prevent eventual changes to such rights (Dworkin, 1989: p. 72).

Dworkin shows the difficulty of defining this type of norms when he seeks to distinguish political guidelines from principles and mentions that (Dworkin, 1989: p. 73):

> The distinction can fall apart if a principle is interpreted as to enunciate a social objective (namely, the objective that no one benefits from his own dumbness), or if the guideline is interpreted as to enunciate a principle (that is, the principle that the objective the guideline depends on is worthy), or even if the utilitarian thesis is adopted that principles of justice enunciate objectives in a veiled way (assuring greater happiness for the greatest number of people). In some contexts, the usefulness of the distinction is lost if it is allowed to be so obscured.

It is worth noting that the Anglo-Saxon legal system analyzed by Dworkin heavily relies on precedents to analyze the Law and its analysis is based on judicial decisions (common law), which differs from the Roman system used in several other countries (civil law), where the legal norms produced by the Legislative and Executive Branches have greater relevance. Thus, for the sake of better understanding, Dworkin's thought has to be adapted to the Roman system in view of the existing differences between the legal systems.

It is noteworthy that guidelines are characterized as a form of action by the State to achieve the existing legal principles in a given normative system, much resembling the concept of public policies understood as a set of legal norms that allow the State to implement the legal principles established in the legal system. To use Maria Paula Dallari Bucci's synthesis, "public policies are government action programs aimed at coordinating the means available to the State and private activities to achieve socially relevant and politically determined objectives" (Bucci, 2002: p. 241). Such public policies do not generate rights for immediate individual enjoyment, but rights to be achieved by the society as a whole, as Dworkin says about guidelines.

It could be said that this is a paradigm shift in understanding law, which moved from the government of men at the time of Absolutism to the government of laws of the liberal-constitutional system, and today it is understood as government by policies characteristic to social constitutionalism according to Paula Dallari Bucci (Bucci, 2002: p. 252). However, as pointed out by Comparato (Comparato, 1998: p. 43), this type of governmental action is not even characteristic of a type of contemporary State, and throughout history "several examples

of Mercantilism, industrialist, or warmongering governing states can be found"[2]. That is, the law did not change, what it changed was the legal understanding of the forms of governmental action.

It is interesting to remember that for Montesquieu, all States have a common objective, which is to preserve themselves. However, each State has a specific objective, as he says (Montesquieu, 1982: p. 187):

> Expansion was Rome's objective; war was that of Lacedaemon; religion was that of the Jewish laws; trade was that of Marseille; tranquility was that of the laws of China; navigation was that of the Rhodian laws; natural freedom is the wish of the savage way of life; the delights of princes is that of despotic states, and the glory of the State or monarchy; the independence of each individual is the objective of the laws of Poland and what results from this is the oppression of all.

This is a very interesting analysis, as it puts on the table the thesis that the Ruling Constitution so dear to contemporary constitutionalists only emerged in present days as a norm that determines the direction that States are to take in conducting public affairs (Canotilho, 2001). It seems more appropriate to mention that in contemporary Constitutions, rights are included to guide the conduct of the State, but they have always had specific objectives, as Montesquieu shows, although they often are not standardized.

Governing through public policies and government action programs is to be understood as a form of action by the State to achieve the goals by and for the society, and that it is not only sufficient to proclaim such rights, but also that the governmental action is adequate for the protection and implementation of rights, especially those considered fundamental ones, and enshrined by the legal system. It is a macro-legal scope regulating certain activities and aimed at achieving purposes previously determined by the legal system. The aim is to implement the *principles* through legal guidelines that regulate activities, and not directly by interpersonal relationships.

It is noted that the expression *public policies* is to have a "universal" character since this universalization is an essential condition for it to be understood; if not, it will constitute a counterfeit, a disguised privilege for some.

The possibilities of macro and micro legal analysis in assessing public policies are endless. We repeat they are not watertight optics representing different areas, and they are necessarily correlated. Here, the importance of interconnected analysis between the macro and micro legal aspects is identified, and their correlation in the analysis of governmental public policies. It's like an orchestra in which multiple instruments are coordinated in search for a harmonic outcome. A single flute or saxophone can be out of tune and disrupt the final outcome of the concert. This points out to the need for planning government actions and

[2]One cannot fail to recall the concept of the corporate republic that Jellinek Georg (2000) Teoria general del Estado. Translation by Fernando de los Ríos Urruti. Granada: Comares, 2000. p. 705. Or even the well-known war focus of the German Nazi government.

analyzing their impacts on the economy.

It so happens that orchestras operate in controlled environments, such as concert halls or theaters, and planning seeks to account for the reality of facts of life. That is why attempts at *excessive* planning of the economy failed, as it is impossible to account for the dynamics of the facts, except through *ad hoc* plans, which contrasts with the idea of planning in capitalist societies where public planning seeks to coordinate specific sectors or activities, generate an impact on a given activity (macro), and indirectly affect economic agents individually considered (micro). The mismatch of the *micro* can also cause the mismatch of the *macro*, as in the case of the dissonant saxophone during the performance of the orchestra.

4. Consequence of This Distinction in the Scope of Justice

Society does not seek to achieve justice *only* through the Judiciary, but as a result of all government actions out of which public policies stand out and regulate the exercise of an activity. Everyone must be imbued with the ideal of seeking justice in their daily activities – society, government and individuals.

As a rule, the search for justice as a result of *individual* infractions is to be claimed before the Judiciary, where issues of commutative justice are resolved, the justice of specific cases involving disputes between individuals - micro-legal scope.

Public policy problems, in order to be considered effectively *public*, that is, universal, have their most appropriate *locus* in the Legislative and Executive branches that create and execute them (according to each country's legal system), since the search for distributive justice is concentrated in these two branches of government.[3]

This attribution of competence to decide must be considered as *relative*, since it does not exclude the possibility of a collective problem (macro) being analyzed by the Judiciary, or individual problems (micro) being solved by the Executive or the Legislative. Affirmed here is the *adequacy* of each of these areas of problems to be primarily solved by these Branches, and not their exclusivity of action.

Thus, it can be established that the privileged *locus* for formulating, approving and enforce public policies, all these functions related to the macro-legal scope of analysis, are primarily connected to the Executive and Legislative branches, with the Judiciary being activated residually and only in case of non-compliance with the relevant rules.

[3]In Brazil, the initiative of the legislative process "in the manner and in the cases foreseen in this Constitution" is assigned to the Chief of the Executive Power (art. 84, III), who still has an exceptional instrument, whereby "in case of relevance and urgency, the President of the Republic may adopt provisional measures with the force of law and must immediately submit them to the National Congress" (art. 62), which concentrates powers in the Executive Branch, although the approval of the norms is exclusive to the Bicameral National Congress, whose decision is subject to the sanction or veto of the Chief Executive. This institutional design of the Brazilian Constitution impacts on the distribution of competence of each of these Powers in the formulation, approval and execution of public policies.

It is clear that justice can be achieved through litigation, and this is the proper scope of action of the Judiciary—the exercise of *commutative justice*, that is, giving each one what is his. However, this is more strongly carried out in the context of *micro-justice*, which can be individual or collective and extended even to those who have not litigated through procedural mechanisms for extending the effects of judicial decisions through which all individuals in the same situation will be reached by the jurisdictional provision, even if they are not aware of such dispute[4].

However, *very rarely* can the Judiciary directly arrive at macro-justice solutions, that is, universalizing solutions in the proper sense. The *object* sought will be different, as it is not about *commutative* justice in the sense of giving each one what is theirs, but *distributive* justice that aims at the distribution and redistribution of wealth in a society. This universalizing scope is characteristic of the Legislative and Executive Branches, which can solve the issues of truly *diffuse* social interests. This is where public policies come in as they are proposed and implemented within the scope of the Executive and Legislative Branches, with the Judiciary being responsible for their control.

5. Conclusion and New Challenges

The central idea of the text can be summarized by stating that the same legal object can have different approaches, based on micro or macro legal analyses. Normally, private agents (companies and individuals) are guided by micro-legal decisions, as this is the scope of their actions, especially. Governments act in a macro-legal way, influencing entrepreneurs' micro-legal decision-making. A government that decides to increase the internal savings rate will adopt a policy of increasing the interest rate, so that entrepreneurs choose to save instead of consume. This economic example, arising from Keynesian analysis, generates different legal consequences for economic agents. This demonstrates two different plans of action and legal analysis.

In this way, government influence needs to be legally articulated with private interests, in order to boost the economy, sending the correct signals of their interests. Public-private articulation passes through Law, in these two planes of analysis.

The idea that there is an *invisible hand* regulating markets, typically liberal, based on the thought of Adam Smith, does not coexist with this analysis, as government acts by public policies directly influence decision-making by entrepreneurs, and the law plays a crucial role in this articulation.

The concept of macro and micro-legal starts with the distinction between different objects to be regulated by Law. While the actions of *individuals* are regulated at the micro-legal level, at the macro-legal level the Law regulates their activities, which distinguishes different scopes for the rules involved.

Public policies necessarily refer to the regulation of the activities in a ma-

[4]In Brazil, mechanisms of *general repercussion* or *concentrated* control of constitutionality are used, for example.

cro-legal scope and not directly addressing the relationships between individuals, which would place them in the micro-legal scope.

A consequence of this distinction specific to the scope of the distribution of justice is immediately identified since macro-legal issues for regulating activities are primarily resolved in the Legislative and Executive Branches, the usual *locus* of distributive justice, while micro-legal issues are resolved within the scope of the Judiciary, the *par excellence locus* of commutative justice. Priority does not imply exclusivity and points to the possibility that, at the limit, macro-legal issues can be brought to court.

The effects of this distinction should be the subject of further studies aimed at identifying its applicability.

One path to be analyzed involves concerns the correlation between fundamental rights that were individually built from a perspective of opposition to the power of the State, and the implementation of public policies that can often clash with such rights as in the aforementioned example about the individual right not to be vaccinated and the need to expand vaccination coverage to guarantee the right to health for all in a preventive way.

Another avenue to be explored involves the *breadth* of what is macro. For example, a tax reform that reorganizes the entire income or consumption tax system will undeniably be something of a *macro-legal aspect*, but specific changes regarding the rates applicable to these taxes will also be in both cases, the object will be regulating activities. There is doubt about the *amplitude* of what is macro: is it appropriate and necessary to distinguish different macro scopes?

Many other questions will certainly arise in the course of the studies, these being just a few examples of what has to be analyzed in this matter as a result of the distinction outlined here.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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