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PROPERTY, COMMON GOOD AND
CONSTITUENT POWER]. SANTIAGO DE
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MIEDO. PROPIEDAD, BIEN COMÚN Y
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The Chilean constitution is being, for some time, subject of the most diverse analysis. Ranging from tests of its legitimacy (both about its origin and its exercise), from historical reconstructions to its genesis, to observations of its legal-political character, these analyses show the disagreement that exists regarding its fundamental charter, referring – mainly – to the existence of rules that are displayed as impossible to be processed in a democratic context.

With a theoretical framework built from a suggestive review of the book “Liberalism of Fear” by American author Judith Shklar, the last book of the Chilean authors Pablo Ruiz-Tagle and Renato Cristi presents with delicacy and novelty an observation of a structural nature that, through the thread of the concept of fear, seeks to explain how using the logical (and the form) through which the document was conceived and instituted by the new constituent assembly, necessitated not only a coup d’état – which allowed for the existence of suitable conditions for the creation of a new institutional non-democratic framework – but also, for a Constitution, which despite its constant reforms, has not been able to leave behind its authoritarian nature.

In the first part of the work, titled “property, republic and the Catholic church, the historical-political foundations of the property are developed in a republican sense, in the words of the authors “It concerns the explanation of a particular line of argumentation and reasoning in respect of the property in the context of the constitutionalism of contemporary democratic root” (p. 22). Similarly, –in the second essay– through an impeccable historical reconstruction that includes the review of public statements given by Jaime Guzman, said to be the main architect of the Constitution of 1980, it is argued that the democratic legitimacy of 1925 is clearly incompatible with the argument that emanates from the gremialism¹ which attempted to legitimize the coup of 1973. The point of liaison between the property and the constitutionalism of the fear, revealed here, since Guzmán (p. 14) has profound distrust of democratic legitimacy, watching as the cause of the statism, which is a serious obstacle to the exercise and unrestricted assurance of private property.

With the aim of revealing the focal point, Ruiz Tagle and Cristi start from the contextualization of the work of Shklar, based on Locke, and argue that the property is “an essential and excellent way to delimit the long arm of the State... and to ensure the independence of individuals” (p. 10), and place the Constitutionalism at the service of the property, transforming it into the constitutionalism of fear (p. 13). Also, they bring a historical analogy between the Shay’s Rebellion (p. 14) (and the social crisis resulting from it), and the situation generated in Chile with the start of the agrarian reform. The authors manage to illustrate how the process initiated by President Alessandri, in the year 1963, creates the necessary conditions for the gestation of the current Chilean constitutional structure. They also stress that, along with the promulgation of the law of agrarian reform, Alessandri attempted a reform that would strengthen presidential power and “modify the composition of the parliament and limit the role of political parties. The senate, according to a criterion of

corporate representation, would include members not elected by popular election, but, appointed by the political authorities, judicial, university and guild” (p. 16). However, the proposed concentration of presidential power failed and the agrarian reform continued on its course, emphasized even more during the government of Eduardo Frei, which in addition, broadened the instances of democratic participation.

According to the research of the authors, Jaime Guzman, would react to this by publishing an article (in the year 1969), in the magazine “*Portada*”, titled “The fear, a symptom of Chilean social reality”, which points out how the State was progressively invading and controlling, the most varied national activities (P.85).

With the arrival of 1970, the defeat of Alessandri, and the resulting victory of Allende, Guzman is convinced that it is impossible to achieve a new institutional framework within the framework of the law, which allows the protection of the property on the terms in which he conceived it. This time the statements –now in the *PEC* magazine– are more direct, and refers to the democratic constitutionalism as “the fatal antidote for the civic and ideological war that it is our duty fight against the Popular Unity.”

In the authors’ opinion, the reason that explains the fear of Guzman to the democracy defined by the Constitution of 1925, is the inability to stop the constitutionalization of the social function of property, a fear that is exacerbated with the arrival of the expropriations.

In the second and third parts, the authors delve into the political thinking of Jaime Guzman, something that somehow had already been dealt with in an earlier work by both authors, titled “The Republic in Chile”, and in another book of authorship of Renato Cristi, titled “The political thinking of Jaime Guzman”, which is a brilliant archeology of the thought Guzman, who is believed to be the architect of the current Constitution.

Here the authors show the evolution and contradiction of the thought of Guzman, who taking the ideas on the monarchical principle from German legal scholar Carl Schmitt (p.24), –strongly applied in Argentina and Spain– asserted that not only the people could be the subject of constitutional power, and justified a new constitutional order in the Board of Governors in who gained constitutional power after the Constitution of 1925 was destroyed. This new constitutional order not only tried to ensure property right so strongly that prevented the fear of losing it would be socially thematized, but also ensure the creation of a rhetoric of fear that led to violence and secrecy.

However the analysis of the existing connection between the property and its classical meaning, social movements and doctrines that were built around it, and the importance that its protection has had on the development of constitutionalism, the authors venture in a republican conceptualization –as indicated by Nedelsky– of the property, so that it is more compatible with a democratic perspective.

Finally, and developing a narrative that is based on solid research, some problematic considerations remain. For example, the structural

conditions that enabled the selection of certain communications in the process that would eventually lead to the coup d'état of 1973, and which predate agrarian reform. Also, the semantics coming not only at the local level but also globally. In this way, it seems insufficient to focus the construction of the Constitution on the relevance of a single political figure (Guzman), in conditions in which the power was not processed by means of any legitimacy appearing as unlikely the possibility of referencing any communication –at least after the coup– in a figure different from Pinochet.

>> ENDNOTES

- ¹ The gremialism corresponds to political and social thought of liberal-conservative, born in Chile from the social doctrine of the church, and which Jaime Guzmán, inspired by the ideas of Osvaldo Lira, was the main ideologue. On this matter can be seen: C CRISTI, Renato. *El Pensamiento Político de Jaime Guzmán*. Santiago de Chile, LOM Editores (2011).