Review

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This new work by Professor María José Falcón y Tella addresses fundamental issues relating to the study of justice in an innovative and comprehensive manner. These are matters of important practical concern and immense interest, which require in-depth reflection and clarity of expression so as to offer a response to the demands of theory of law and axiology of law, which impact on other areas of legal science such as criminal and civil law and bioethics.

From a global perspective – offering a kind of compendium revolving around the subject of justice – the work lays out and considers, in ordered and coherent fashion, the issues that have arisen as regards the idea, concept, grounds, classes and implementation of justice. It is to be highlighted that this work contains a particularly fascinating analysis regarding the impact of the notion of justice on the resolution of problems arising out of the social context of our times.

With expository clarity, concision and precision, the work is divided into two parts. The first, under the rubric of "Main doctrinal theories", refers to classical theories of justice from authors and sources such as Aristotle, Plato, Thomas of Aquinas, Machiavelli, the Bible and the Qur'an. The author also presents modern conceptions of justice from legal philosophers of our time, delving into John Rawls' concept of justice as equity, the thinking of the German philosopher Jürgen Habermas, the theory of one of the foremost thinkers in the Anglo-Saxon tradition, Ronald Dworkin, and many of the other main conceptions of justice, including those of Nozick, Posner, Wojciech Sadurski, Marxism and feminism.

The second part, under the heading of "Main contents", demonstrates the author's wide-ranging intellectual background through a review of the other part of the problem with relation to justice, what may be called objective as opposed to the subjective aspect dealt with in the first part. The author analyzes justice-related issues such as punishment, just war, tolerance, civil disobedience, conflict of rights, and conscientious objection to unjust laws, as well as the relationship of justice with other related concepts such as religion, equity, legal certainty, equality, freedom, bioethics-related issues, and a comprehensive exposition of theories of social contract. This is undertaken in detailed and engaging fashion, in many cases based around a historical outline of institutions.

The richness of this book prohibits a review detailing all the points covered therein. For this reason, I shall content myself with highlighting only three of those points, by way of example.

First, the reader will find particular interest in the conception of justice emphasized by the author in the title of this work: justice as a "desert", an ancient idea that being just is giving to each what they deserve – the "*suum cuique tribuere*" of the Roman "*tria iuris praecepta*". But recently, there has been a return to the idea that desert is an essential component of the notion of justice, given the limitations of utilitarianism. The author traces advocates of theories of desert from Adam Smith and Immanuel Kant to John Stuart Mill and Henry Sidgwick.

The author dedicates a special mention to the work of the Polish-Australian philosopher Wojciech Sadurski, *Giving Desert its Due: Social Justice and Legal Theory*. Sadurski's theory of the hypothetical "balance" of burden and benefit – in which, for this author, justice consists – rests upon the central notion of desert.

In theories of desert, justice is achieved when there is a balance or proportionality in the distribution of what is deserved and what is undeserved. As the author notes, many writers on desert also require that it be linked to goodness, to morally laudable motives. This is not the case for Sadurski, whose theory of desert does not demand moral merit on the part of the individual, but rather a beneficial effect for society, though this may not have been the motivating purpose.

This is so even if, as Professor Falcón y Tella indicates, to be able to speak of desert it is necessary that the conduct be in some manner "onerous", that it involve an element of "sacrifice", work, risk, responsibility or inconvenience.

Professor Falcón y Tella rightly notes that, though the term desert may be used very broadly, it is understood in theories of justice as "moral" desert in a double sense: as a counterpoint to conventional or "institutional" merit, and as a counterpoint to "natural", that is, whatever accrues other than through human choice or intervention. In conclusion, theories of desert do not prohibit an understanding of justice as a model for "distribution" and the possible "rectification" of injustice, with relation to the idea of respect for human dignity.

The exposition continues by explaining the origins of the problem for the theory of desert: the theoretical and practical difficulties of measuring it, though the author notes that this problem is lessened if prudent conduct is admitted as a basic foundation for desert. This is so because avoiding sanction and seeking to obtain remuneration may be considered common examples of such prudent conduct, thereby recalling the original and classic *ars prudentiae*, applied to the most modern theories on desert.

As regards the second part of the work, I wish to emphasize the section focusing on justice and civil disobedience. Knowing the research path trodden by the author, her vast background in civil disobedience which has made her an internationally cited leader in this field, to which she has dedicated her academic career, the reader of this work will find the most original of the conclusions she has reached in previous studies on this matter, in a clear, extensive, detailed and readable form. As such, it is apt to sketch an outline of those conclusions.

Professor Falcón y Tella's position with respect to civil disobedience, set out in this work, consists of affirming the existence of a certain "right to civil disobedience". This right is not of merely moral character, but is rather a "subjective right".

From the three-dimensional scheme that the majority of writers follow in justifying civil disobedience, the author states that wherever all the requirements are fulfilled, civil disobedience may be: (1) "justified" on the plane of values: the moral justifications advanced in natural law, relativist and utilitarian doctrines are analyzed fully and in detail; (2) "explained" on the plane of facts; and (3) "excused" on the plane of legal norms.

For the third plane of legal norms, and in the difference between justifying and excusing – the legal excuse – Professor Falcón y Tella notes the Achilles heel or unexplored avenue that may allow one to speak of a *sui generis* "right" to civil disobedience, stressing in this regard a key word, "antimonies", which may be translated in context as contradictions or conflicts.

The author considers in detail situations in which antimonies between powers may arise, including that which holds greatest significance for civil disobedience, normative antimony. This is analyzed and discussed with logical clarity, since this is what allows one to understand whether it is possible to speak of the existence of a subjective right to civil disobedience.

In situations of civil disobedience, a conflict occurs in which at least three types of norm are involved: (1) The norm that the act of civil disobedience violates; (2) the norm sought to be implemented in its place, not forgetting that civil disobedience is aimed at innovation, at changing the applicable law; and (3) The norm upon which the infringement of norm (1) is based. After explaining the foregoing premises, the author concludes by affirming that disobedience on the normative plane of legal excuse would be an illegal act insofar as it infringed legal norm (1), but its legality does not fall within the rigid schema of offences, and, furthermore, it enjoys a certain legal support on the basis of the existence, together with the infringed norm, of other type (2) and (3) norms.

Changing tack and also in the second, objective, part of the work, though again only by way of example given the richness and variety of the issues dealt with herein, the section concerning justice and equity is especially noteworthy. There are two reasons for highlighting this section. First, Professor Falcón y Tella possesses particular knowledge regarding the legal tradition in Anglo-Saxon legal systems, as recognized in prestigious publications. The institution of "equity" has become entrenched in these systems, acquiring greater importance than in Continental law. Second, justice and equity has been chosen as it tends to be an attractive institution for legal scholars with Continental training when they seek to deepen their legal knowledge so as to understand the origins of its workings.

In summary, the reader will find in this section a rigorous, clear and exceptionally useful analysis of the fundamental legal concepts, partly but not wholly connected, of justice and equity.

From the starting point that a link exists between the notions of justice and equity: equity is justice brought to life. The just, in its normal sense, expresses rectitude in a general, schematic and rational fashion, as in the case of legislation.

The equitative, in contrast, expresses what is just in its concrete, spontaneous, complete and living reality. Equity does not judge or alter the law; rather, it simply judges a specific case, marginal in the eyes of the law. It prevents someone being treated inflexibly and unjustly through a general application of the law when their case falls outside the generic provisions contained therein.

Professor Falcón y Tella notes that the relationship of equity with justice is a complex one, with various manifestations. In this regard, equity may be understood as a relative or comparative justice, what we normally call equitable or corrective justice, such important concepts in classical Roman law. It may also be understood as the balancing of strict law, as "case-specific", individual or singular justice. This is justice in its Greek conception, understood as *epieikeia.* Still further, inasmuch as an appeal to justice does not reside in strict law but rather in natural and moral reasoning, equity may even be compared to natural justice.

Equity is, then, a manifestation of justice, an ontological dimension thereof which embeds positive justice and makes it whole. Nonetheless, the author also notes factors differentiating the two. Law is a "science". Justice is a "virtue", and equity a "fact". From this perspective, equity is none other than the realization of justice. Justice is the realization of law, and law the realization of the social nature of humanity.

From another perspective, the author points out that justice fits more within the remit of the legislator, while equity falls within that of the judge. As for differences between the ideas, justice is an "absolute" of "metaphysical" character, while equity is "relative" and of a contingent, "experimental" nature.

Toward the end of this work is an extensive section dedicated to justice and the social contract, in which, after exploring the main contractual theories in depth through an accurate critical analysis, the author describes their negative aspects and assesses their positive contributions, emphasizing various of the latter. First is the idea that no society, government or law is legitimate unless based directly or indirectly on the consent of interested parties, though this may not necessarily assume the form of a contract. Second is the consideration that the object of legal science is the political consent of groups and individuals. Third, the legitimacy of governments lies in their respect for a series of inalienable individual rights, common to humans at all times and in all places. Fourth, one of those rights is the fact that decisions must be taken within a democratic framework, under popular control, and unanimously or, in the absence of unanimity, according to the opinion of the majority. Fifth is the idea that all humans are born equal and with an inalienable right to legal equality, which any government must respect.

The work concludes with an ample and well-selected bibliography, demonstrating both its great scientific value and its author's intellectual rigour.

This work is well researched, solid and detailed on the issues it explores, specific and clear in its exposition, and readable. A reader seeking an enriched understanding may draw upon Professor María José Falcón y Tella's compendium studying the most significant justice-related issues arising in the current social context, the resulting work proving of great interest for all students of the theory of law and axiology of law.