

TEORIA DE LOS DERECHOS FUNDAMENTALES

Modelo individualista: Este modelo se basa en una mentalidad y cultura individual, propia del Estado liberal, que se opone al orden estamental medieval, en tanto la persona está diluida en las organizaciones corporativas.

Modelo estatalista: Se basa en la idea de que el Estado total es la condición y soporte necesario para la creación y tutela de los derechos y libertades. Por ello: "En la lógica estatalista, sostener que el estado de naturaleza es bellum omnium contra omnes significa necesariamente sostener que no existe ninguna libertad y ningún derecho individual anterior al Estado".

Modelo historicista: El orden natural de las cosas asignaba a cada persona sus derechos civiles desde su nacimiento; en tanto que no se concebía la existencia de derechos políticos, en razón a que la ley estaba en función del equilibrio y control del gobierno.

Teoría institucional: Los derechos fundamentales entendidos como derechos objetivos absolutos o como derechos subjetivos individualistas, resultan ser una concepción insuficiente que no responde a las demandas del desarrollo jurídico-social.

Teoría de los valores: La teoría axiológica de los derechos fundamentales tiene su origen en la teoría de la integración de la entreguerra; para la cual "los derechos fundamentales son los representantes de un sistema de valores concreto".

Teoría liberal: Los derechos fundamentales son derechos de libertad del individuo frente al Estado; es decir, se conciben como derechos y libertades como derechos de defensa (Abwehrrechte).

b. Teoría multifuncional: Busca superar la unilateralidad de las distintas teorías sobre los derechos fundamentales, dada la pluralidad de fines y de intereses sociales que abarca el Estado constitucional.

dos subteorías institucionales que a continuación se esbozan

Teoría democrático-funcional: Se parte de concebir a los derechos de la persona en función de los objetivos o funciones públicas y del Estado constitucional, en el marco de una democracia deliberativa.

Teoría jurídico-social: El punto de partida de esta teoría de los derechos fundamentales es la

a. Teoría sistémica: el análisis sistémico de los derechos fundamentales también incorpora la variable social compleja; es decir, que el ejercicio de los derechos y libertades se encuentra en correspondencia con el sistema jurídico, que depende del sistema social existente, moderno o tradicional.

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Annelies Wilder-Smith



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