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Chapter

Perspective Chapter: Principles of Higher Education

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Abstract

The right to education is enshrined in international law and its fulfillment appears every day as a citizen demand. In general, the States recognize the right to education when they signed the Covenant on Economic, Social and Cultural Rights. Social and Cultural Rights in which it is materialized in a concrete reality that must be expressed in education itself. It is necessary to understand that education is the result of a non-democratic model imposed by a dictatorship, the purpose of which was to protect capital, with which everything remained a prisoner of a neoliberal conception. Of course, education is a necessity both individually and collectively, so that efforts for quality higher education are necessarily related to the democratization of societies. Finding such an answer is everyone's task and this forces the analysis of laws and behaviors.

Keywords: right to education, pre-eminence, inequality, economic, social and cultural rights, teaching, research and extension

1. Introduction

The question arises as to what is the purpose of higher education [1], especially postgraduate education, and whether there are guiding principles [2]. Undoubtedly, before answering this question, it is necessary to know the social and legal context in which education is developed and whether this context will have an impact on it [3–10].

In many countries there are social demands that go beyond education [11]: change in the development model, which demands more equality, less discrimination; more kindness, less authoritarianism; more tolerance, less marginalization; more truth, less disguises; more life, less obscurantism; more diversity, less rejection of those who are different; and more than that, full respect for diversity, more integration, less human suffering; more rights, more dignity and recovery of natural resources [12]. Demands that have been taken up by political parties and civil associations everywhere [13].

Social organizations everywhere invite us today to advance resolutely in the solution of these problems so that human rights can be exercised by all. This requires promoting a greater development of the culture of human rights, strengthening education in these matters, introducing reforms to the legal order, strengthening justice and establishing social policies to overcome poverty, marginalization and psychological integrity,
punishing racism, putting an end to profit-making in education and establishing free, quality public education. In order to achieve such effectiveness, it is urgent to energetically position human rights in the State, so that all its organs, institutions and instances allow its exercise, while transforming the State into an authentic Social and Democratic State of Law, and also to reform Justice, continue ratifying international conventions on fundamental rights including those of the International Labor Organization, guarantee the exercise of fundamental rights with constitutional actions for their enforcement, promote the decentralization of politics through the creation of mechanisms that allow greater participation of the people in political decision making, such as plebiscites, referendums, and referendums, such as plebiscites, referendums and popular consultations, creating state institutions such as the Ombudsman to reduce bureaucracy in access to state mechanisms, developing an international policy based on human rights, solidarity and reciprocity, proposing the inclusion in trade and economic integration agreements of norms on human rights and social policies, promoting legal reforms for a better exercise of human rights, the establishment of a full democracy by creating a new constitution that ultimately changes those aspects that prevent the full exercise of human rights. All the above is already proposed and recognized in the different international conventions and in the United Nations Charter itself.

It is necessary to establish as a society a comprehensive proposal to overcome the inequities that the current model of society has produced and to begin with, gathering the social demands, the following should be agreed upon [14–20]:

• To achieve a full, tolerant, uncensored, and welcoming democracy, which implies the end of the binominal system and the creation of plebiscitary mechanisms.

• Generate a society that emphasizes human dignity as a central value.

• Educate children and young people in a culture of profound respect for human rights.

• To build a society in which human rights are never again violated. The best guarantee of respect for human rights consists in a society in which every woman and man is clearly aware of their own and other people’s rights, and has the vocation to be the protagonist of their affirmation and defense.

• To build a system of free, quality public education at all levels, accessible to those who have the capacity to do so.

• To create support institutions for those who do not have sufficient intellectual or information capacities to access higher levels of education.

A State policy focused on full respect for human rights can only be the product of a democratic society project based on the development of international law and science, where social and political actors, civil society, culture and individual acts are the reflection of a deep conviction: respect for the other, recognition of diversity, acceptance of pluralism.

If we understand that a university is par excellence the natural center for the free development of thought and ideas at the highest academic level, we can conclude that the academic units that emanate from it must enhance and outline this role to the rest of society [21].
Accepting, as an essential basis of the work of the University, the revaluation and enhancement of the concept of citizenship as an axis of basic development of a democratic system, this institution should be a natural axis of articulation of knowledge and deepening of matters related to human rights and humanitarian law and its natural relationship with civil liberties and the deepening of democracy [22].

2. A constitutional proposal

For a year a Constitutional Convention worked in Chile, proposing a text of a new constitution submitted to popular consultation on September 4, 2011, and rejected by 63% of the electorate, in an election with the highest citizen participation in the history of the country.

The constitutional process has undoubtedly been epic in every sense, not only as it originated from a massive protest, the largest in the history of the country, in the election of the conventions, in its debates, in the obstacles and traps that tried to place the supporters of the constitutional status quo, who in a hypocritical manner presented themselves to draft a new constitution when in reality they only aspired to the failure of the Convention and finally for the intense work done in pandemic conditions, a meritorious work that deserves recognition [23].

The whole system of domination, including the traditional political parties in a transversal way tried to put sticks in the way, but in the end the center-left political parties were alienated with the new project, leaving only the right and the extreme right in the defense of Pinochet's Constitution.

Modern constitutions originated after violent struggles in which the dominated defeated the dominators. This was the case of the United States of America and then France, whose constitutions have been models for the rest of the world, then Mexico and the Soviet Union. These constitutions, like those that followed in Latin America and other parts of the world, were not perfect because they only declared rights, but did not guarantee them, and even workers were not recognized as equal subjects of rights, discrimination based on race was allowed and women's rights were denied, except in the case of the Soviet Union, which emphasized labor rights more than political rights. Finally, with the creation of the United Nations, a substantial change began that gradually expanded the recognition of rights for all. It was not until the end of the twentieth century that economic, social and cultural rights acquired the same status as civil and political rights, in an ongoing universal development [24].

The Chilean constitutional proposal constituted a substantial change in constitutionalism, and its merits are manifold. Both in its origin and in its content. We know that perfection does not exist and that everything can be improved, however, there is no other constitutional proposal in the world as advanced and broad as this one, nor that reflects reality as this one did. Of course, as it originates, without civil war, then it is parity, it recognizes the native peoples, it declares without extenuations the guardianship of the State over human rights and guarantees them, it grants protection to all living beings, it incorporates the protection of the environment as the essence of the State, it establishes democratic participation in all political, cultural, social and economic activities, it clearly declares that the State of Chile will maintain relations with other States and with international organizations based on the respect of the law and international conventions. It has enshrined essential rights such as health, education, recognition of domestic and care work, the right to housing, adequate food, the human right to water and sanitation, and the right to live in safe and free of violence environments.
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In education, the proposed convention established a series of principles inspired by existing instruments of international law, such as the following:

2.1 Education system

Article 36 of the proposed new Constitution, in its chapter on Fundamental Rights, enshrines 8 paragraphs on the structure and functioning of the education system. The norm begins by alluding to its definition: “The National Education System is made up of the establishments and institutions of kindergarten, basic, secondary and higher education, created or recognized by the State. It is articulated under the principles of collaboration and has as its center the learning experience of the students”. Along with this, several principles are also detailed, which must be present within this system, strengthening elements such as the National System of diversity of artistic, ecological and cultural knowledge, as well as the autonomy of indigenous peoples and nations to develop their own establishments, within the framework of the law that regulates the system. It also states that establishments may not discriminate in their access, prohibiting, in addition, and as is the case today, all forms of profit. It also states that “The State shall provide additional opportunities and support for people with disabilities and those at risk of exclusion”.

2.2 Public education

Within the same article 36, in its last paragraph, the role of public and state education is directly alluded to, through elements that define a more active State and articulator of a public education system. “The State shall articulate, manage and finance a Public Education System, of a secular and free nature, composed of state establishments and institutions of all educational levels and modalities. Public education constitutes the strategic axis of the National Education System; its expansion and strengthening is a primary duty of the State”, states the norm. To this is added the role of the State in financing this system: “The State shall finance this system permanently, directly, pertinently and sufficiently, through basal contributions, in order to fully and equitably comply with the purposes and principles of education”, it states.

Jesús Redondo, an academic at the Faculty of Social Sciences of the University of Chile and an expert in educational issues, explains that this article generates an
epistemic change in education. “There are many changes regarding education. It ceases to be a mere privatized public service and becomes an authentic social right. The State assumes its obligations to the right to education”.

2.3 Freedom of education

Article 41, meanwhile, refers exclusively to freedom of education, a right enshrined in most of the world's constitutions, including the one that currently governs the country. The norm is divided into three subsections that define this freedom as a fundamental right. “The Constitution guarantees freedom of education and it is the duty of the State to respect it. This includes the freedom of fathers, mothers, parents and guardians to choose the type of education of their children, respecting the best interests and progressive autonomy of children and adolescents”.

Together with this, the same article establishes the right of teachers to teach: “Teachers and educators are entitled to academic freedom in the exercise of their functions, within the framework of the purposes and principles of education”, the article states.

The novelty of this norm is that this freedom must respect the interest of the students, a principle that was not enshrined in the current constitutional text.

2.4 Higher education

Article 37 expressly refers to the functioning and development of higher education, starting with a new element: the constitutional consecration of the principle of free education for students of state universities and those private universities determined by law. “The admission, permanence and promotion of those who study in higher education shall be governed by the principles of equity and inclusion, with special attention to historically excluded groups, excluding any type of arbitrary discrimination. Higher education studies, leading to degrees and initial academic degrees, will be free of charge in public institutions and in those private institutions determined by law”, states the norm.

Along with this, it also defines what is understood by the higher education system and who comprises it: “The Higher Education System will be made up of Universities, Professional Institutes, Technical Training Centers, training schools of the Armed and Security Forces, in addition to the Academies created or recognized by the State. These institutions shall be governed by the principles of education and shall consider local, regional and national needs. All forms of profit shall be prohibited” [26].

Finally, another clause reinforces the concept of state public education: “State institutions of higher education are part of the Public Education System and their financing shall be subject to the provisions of this Constitution, and shall guarantee full compliance with their functions of teaching, research and collaboration with society”.

2.5 Ecological education with a gender perspective

The environment and the gender perspective are two elements that cross transversally the different chapters of the proposed new Constitution. And, in this line, they are not absent in the norms on education. Thus, Article 39 establishes its ecological function: “The State guarantees environmental education that strengthens the preservation, conservation and care required with respect to the environment and nature, and that allows the formation of ecological awareness”, states the norm.
Article 40 establishes a gender focus: “Every person has the right to receive comprehensive sexual education that promotes the full and free enjoyment of sexuality; sexual and affective responsibility; autonomy, self-care and consent; recognition of the diverse identities and expressions of gender and sexuality; eradicates gender stereotypes, and prevents gender and sexual violence”, states the norm.

This proposal was rejected in bloc by the citizens last September 4.

3. Right to education and content

It is obvious that it is not enough to argue that the right to education is recognized because there are norms that establish it, whether of constitutional or legal rank. Nor is it enough for a State to have an abundant budget dedicated to the development of education, whether public or private, free or paid, but with a State policy of quality and equal for all, therefore, non-exclusive. But its contents should also have a relationship between content and democracy. UNESCO analyzes this relationship in the perspective of promoting a true exercise of the right to education that includes Education for Sustainable Development, intercultural education and education for democracy.

4. Higher education today

How can we define what a university is and what we can understand as a University of Excellence, it is the one that combines in a balanced way the functions of teaching, research and extension. In the case of Chile, only five of the sixty universities that exist in the country meet this fundamental requirement, various indicators tell us about this inequality. These are Universidad de Chile, Universidad Católica de Santiago, Universidad de Concepcion, Universidad de Santiago and Universidad Austral. This phenomenon can be seen in practically every country in the world.

In the case of Chile, a review of university budgets shows that those universities that carry out teaching, research and extension functions invest twice the number of full time and doctoral degree academic resources per student. If a comparison were made between each of the indicators in the research universities, the other universities that concentrate 28% of the student body according to a CIES study, this gap would increase the difference between indicators by five or seven times more. (These indicators have always positioned the University of Chile in the best places in the standardized scores of quality measurement, today this university occupies the ninth place in Latin America and the 400th place in the world, far away from the other universities in the country).

5. The problem of education

In the case of Chile, regarding education, both in the LOCE\(^1\) and in the LGE, firstly, students since 2006 demanded equality and quality in education, and free access to it, so their request for the repeal of the LOCE came into force in 2009, thanks to the general education law that repealed it.

\(^1\) http://www.bcn.cl/leychile/Navegar?idNorma=30330.
Currently the student demands are regarding higher education, where they demand a greater coverage in money for those who do not have greater economic resources, including the middle class that is also affected and being this the one that mostly aspires to higher education.

The recurrent problem is the lack of resources provided by the state to be able to follow these higher education studies, or the resources provided by individuals [27] (banks, commercial houses, etc.) indebt the middle classes and lead to an economic tie once the studies are finished, considering also that the income in many professions is insufficient. The state dissociates itself from its obligation, excusing itself that this education is not compulsory, so it only provides coverage for basic and secondary education in public establishments where there is consensus that it does not prepare students to enter university life and is the cause of inequalities. According to the OECD, the Chilean system generates a division between rich and poor from the classroom. Perhaps the most convincing evidence for Chile in this aspect (...) are the results of the standardized tests that faithfully reflect the economic stratification of the same, living in Chile a hyper-segregation...” [28].

According to the rectors of public universities and coinciding with the OECD, the Chilean Educational System is one of the most expensive in the world and the most unequal in learning. It is inferred from the reading that an education has been built for the rich and another for the poor (this data is in the different statistical yearbooks that can be investigated and with the reading of these can be validated the affirmation of the previous paragraph, then we can consult the following institutions: Mineduc, National Institute of Statistics and Universities, among other research institutions).

Undoubtedly, education financing is a serious problem everywhere. In Chile, more than 85% of the investment in higher education comes from families, which compares with 30% on average in the OECD and less than 15% in some European countries.

Compared to other OECD member countries, Chile has the highest relative cost in higher education, considering that the average value of tuition fees represents 41% of GDP per capita. It cannot be refuted that higher education fees in Chile are high and that their weight is rooted in the family” (I will not go into describing what the state-backed credit (CAE) has meant for the family, which has 25% of university students indebted and have left the university with no return, (as an anecdotal fact, the rate that graduates in the US is 16% of those who enter), and also gave the intermediary bank the action of operating the credits and internal taxes to pursue this moratorium, and as a precedent worthy of Ripley, the state has repurchased from the bank 40% of the overdue portfolio. Business is business).

It can be inferred that the prevailing economic model has been more concerned with being efficient and effective in profit in the technical sense of the holder, than in the actual result of education.

The Organization for Economic Cooperation and Development (OECD) states that in Chile:

“Chilean education is influenced by an ideology that gives undue importance to market mechanisms to improve teaching and learning” investment in education in terms of financial and human resources has been very high compared to before the 90’s, however, it has not produced the results expected by the community and the needs of Chilean society” [29].

Behind the problem and part of it is the neoliberal ideology that constitutionalized its maxims, which is evident in Chapter III of Decree Law No. 3464, “Of the Constitutional Rights and Duties”, in Art. 19 No. 10 and 11 where the value is placed on the freedom of teaching, the business of education over the right to it. This chapter marginalizes
the state responsibility in matters of rights, which translates into a lack of guarantees so that citizens are defenseless against the abuses of the AFP, the ISAPRES, the private U’s and the business organizations. It is this legal-legal constellation that “regulates” the system, and includes the General Education Law (2009, which replaces the LOCE), the result of the 2005 conflict that once again demonstrated how the Chilean institutional traps (Binominal System, Qualified Quorum Laws) only visualize a part of the existing interests in our country and finally, even though the legislation prohibits universities to profit, their owners historically endowed with tremendous impunity. Therefore, it can be argued that one of the problems of education in general is precisely profit.

6. Central problem of current educational institutions: the absence of the state

In Chile, the State contributes 56% of the cost of education and families 44%. In OECD countries, the State contributes 85% and families 15%. However, many institutions profit from the State’s contribution. In Chile, education is one of the most expensive in the world. At the university level, the cost of education is 72% of the Per Capita Income. In OECD countries it is 44%. From 1950 to 1973, public spending on education grew 10% annually. The military dictatorship brought public spending on education from 7% of GDP to 3%. In public schools 85% of students come from the poorest 60%. In private schools more than 60% of students come from the richest 20%.

In Chile the tax burden is 19% of GDP; in OECD countries it is 38%. Therefore, there is a great margin to obtain public resources.

Chile has the highest military spending budget in Latin America. While it spends 0.3% of GDP on higher education, it spends 3.6% on defense.

Chile has the highest per capita income in Latin America, but the worst distribution of this income. While the region assumes public education with a poorer income, the State in Chile requires families to do so.

Chile is 7 times richer than in the 60’s when public education was financed.

Chile exports 80 times more copper than in the 60’s when public education was financed.

The student population today is a little more than double what it was in the 60s, and in higher education it is 10 times more.

To bring public spending to 7% of GDP, only 7 billion dollars are required. Less than mining profits.

The nationalization of copper gave the country between 1971 and 2009 much more than all private companies with income tax (including banks, AFP, Isapres, Corporations, Insurance, etc.).

7. Society and law in today’s university

National universities, both public and private, have yet to fulfill their task in the formation of professional citizens, that is, people who receive a human rights-based education. This need arises not only because of the enormous development of this branch of law and of knowledge in general, but also because our country has suffered in the flesh the consequences of a lack of cultural level in this area.

Chilean universities are in a position to carry out activities aimed at teaching and research inspired by humanism, and particularly by human rights, which implies
strengthening the teaching of their own professors, notwithstanding the fact that even in some private universities censorship is practiced in the inclusion and selection of professors.

From this point of view, the Chilean university could make an effort to sensitize as many people as possible to these tasks, positioning human rights in the university, awakening interest in greater active collaboration by all to help society and the State to adopt attitudes, mechanisms and standards to promote human rights, including diffuse interests and prevent their violation. In the field of education, the country has not been able to implement the cross-cutting human rights objectives defined in the education law, while at the university level there is still no in-depth development of these rights or efforts for peace education, which cannot serve, in any case, as an excuse to allow - as if it were someone else’s problem - the maintenance of an educational model based on profit and creating more inequality.

To persist in making up the current model of education would be similar to the attitude of the nouveau riche who believe that it is enough to buy new furniture, nice objects and libraries to appear modern and cultured, or it can also be assimilated to the trauma of the raped child: not recognizing the fact, living with the anguish of the past without facing the pain.

It is not enough that the government manages to dominate the macroeconomy, increase exports and per capita income, not even that it manages to eventually put an end to hard poverty; all this may be part of the material wealth, which could satisfy some people. However, there will be no modernity in Chile if the laws remain in force and the production of acts that disregard fundamental rights, such as education, health, social security and work. The essence of modernity resides in a form of State that is characterized by the people exercising sovereignty, the authorities respecting human rights in their entirety, and in the effective exercise of human rights, which is not achieved within the framework of the current Political Constitution.

To consider human rights in their integrality seems abstract and not very generalized, and nevertheless modernity is properly such only when the full exercise of all rights by all is achieved and in them the right to education is fundamental, bearing in mind that the State of Chile, in addition to the rights recognized in the current Constitution, has ratified the Covenant on Economic, Social and Cultural Rights, which provides that the State of Chile must respect the rights recognized in the current Constitution, and in particular the right to education. Social and Cultural Rights, which provides that the State of Chile must respect the rights recognized in the current Constitution, and in particular the right to education. Social and Cultural Rights, which provides that the State must provide free education, including higher education, since Article 13 (c) states that “Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education”; its non-compliance constitutes a violation of the international treaty.

With the current system of education, the middle class has become increasingly indebted, to the point that it is becoming a slave class to the financial system [30].

8. Right to education in international law

“...Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms...”

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

The International Covenant on Economic, Social and Cultural Rights provides in Article 13:

1. “The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

a. Primary education shall be compulsory and available free to all;

b. Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

c. Higher education shall be made equally accessible to all, on the basis of individual capacity, by every appropriate means, and in particular by the progressive introduction of free education;

d. Fundamental education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

e. The development of the school system should be actively pursued at all levels of education, an adequate system of scholarships should be introduced, and the material conditions of the teaching force should be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children or wards schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State, and to ensure that their children or wards receive such religious or moral education as may be in conformity with their own convictions.

4. Nothing in this article shall be construed as restricting the freedom of individuals and bodies to establish and direct educational institutions, provided that the principles set forth in paragraph 1 are respected and that the education given in such institutions conforms to such minimum standards as may be prescribed by the State.”
9. A problem not overcome

Public university education in Chile was free until 1990, when the Pinochet regime enacted the Organic Constitutional Law of Education No. 18.962 (LOCE), which was published in the official gazette of Chile on March 10, 1990, the same day of the end of the military regime, law that was enacted in the exercise of power of Augusto Pinochet Ugarte, on March 7 of the same year. It was repealed in 2009, by the General Education Law (LGE), during the government of President Michelle Bachelet.

The International Covenant on Economic, Social and Cultural Rights was promulgated on April 28, 1989 and published in Chile’s official gazette on May 27, 1989. According to the provisions of Article 5 of the Political Constitution, the aforementioned Covenant was part of the Constitution, so that the right to free public education was guaranteed, since the progressive implementation of free education had been achieved prior to the Covenant, so that its subsequent elimination constitutes a disregard and infringement of the law and of the aforementioned international Covenant.

International law does not require a specific form for the reception of the treaty, it only requires the States that commit themselves to fully comply with the Treaty. The different procedures of incorporation put into practice in the different States, as De Visscher maintains, do not alter the fact that treaties constitute both a source of Internal Law and of International Law. And the only requirement of International Law is that the treaty be respected and complied with, for which each State may adopt the necessary and useful measures. Chilean legislation incorporates conventional international law through the procedure of promulgation and publication of the Treaty in the Official Gazette. Indeed, Article 54 of the current Political Constitution provides that “The Congress has exclusive powers: 1) to approve or reject the International Treaties submitted to it by the President of the Republic prior to their ratification. The approval of a treaty shall be subject to the procedures of a law”.

The same constitutional regulation contemplates in its Article 75 that “The promulgation must always be made within 10 days, counted from the time it is appropriate. The publication shall be made within five working days following the date on which the promulgating Decree is fully processed”. Article 5 of Decree Law 247 of 1974, establishes a mechanism for the incorporation of the treaty into the legal system, stating that “such treaty shall be promulgated by Supreme Decree of the Ministry of Foreign Affairs”, which shall order its compliance and that it be carried into effect as a law of the country and that “such Supreme Decree as well as the text of the treaty be published in the Official Gazette”.

The promulgation and publication of international conventions give them full force and effect, which translates into their full incorporation into the domestic legal system. The Courts may directly apply the provisions of such conventions, without prejudice to consider the rights recognized therein as principles of law and as jus cogens norms, as the case may be.

When the conflict between national and international norms cannot be resolved through interpretation, then the courts have invariably indicated that international law takes precedence.

In the specific case of International Covenants, the conciliation between International and National Law is inevitable and obligatory for the Courts, by virtue of the provisions of Article 5 paragraph 2 of the Political Constitution of 1980, which provides that the “exercise of sovereignty recognizes as a limitation the respect for the essential rights that emanate from human nature”, rights that are - in turn - recognized in detail in the International Covenants mentioned above.
The Political Constitution of 1980 recognizes and guarantees the exercise of many of these human, civil, political, economic, social and cultural rights, in particular in articles 1, 4, 5, 10, 12, 13, 14, 15, 19, 20, 21, 45 and 76. These constitutional norms find their referent in those of the Covenants. Indeed, the duty of the State to recognize the freedom and equality of all, which is enshrined in Article 1 of the Constitution, is recognized in Article 2 of the Covenant on Civil and Political Rights and in Article 2 No. 2 of the Covenant on Economic, Social and Cultural Rights. This exercise can be done with each of the human rights recognized in the Constitution.

Eventually, national law, including constitutional law, could collide with the Covenants, but such conflict must necessarily be resolved in favor of human rights, not only because of the binding nature of International Law but also because the Constitution itself, in Articles 1 and 5 of the Constitution, first provides for the foundational nature of human rights and then, the limitation to the powers of the authorities instituted in the Constitution, in the respect for the essential rights that emanate from human nature. Notwithstanding the foregoing, the Chilean courts have made efforts to ensure that the international standard is applied in the country, making conciliatory interpretations to that effect.

Of course, the current Political Constitution contains some norms of public law that establish contradictions with those of international conventions, and the way to solve them is not by judicial means but by an effective process of constitutional and legal transformation based on the exercise of the right to self-determination of the people, enshrined, for example, in the International Covenants on Human Rights, in accordance with the obligations stipulated in the second articles of these legal instruments, nowadays in force as Chilean internal laws.

10. Constitutional status of the covenants

The current Political Constitution contains a series of norms related to human rights that give a different normative context to their validity. Indeed, Article 5, paragraph 2 of the current Constitution recognizes that “It is the duty of the organs of the State to respect and promote those rights guaranteed by this Constitution, as well as by the International Treaties ratified by Chile, which are in force”. In this way, the human rights recognized in the international treaties ratified by Chile are incorporated into the constitutional sphere, thus giving content to the sentence of the aforementioned paragraph 2 of Article 5, which states: “The exercise of sovereignty recognizes as a limitation the respect for the essential rights that emanate from human nature”.

The foregoing is reaffirmed by the provisions of Article 19 No. 26, which establishes the certainty that the legal precepts that by mandate of the Constitution regulate or complement the guarantees that it establishes or that limit them in the cases authorized by it, may not affect the rights in their essence, nor impose conditions, taxes or requirements that impede their free exercise. Thus, the fundamental bases of the Constitution recognize the human rights enumerated in the Constitution itself, as well as those established in international treaties ratified by Chile and in force, and therefore no legal or constitutional norm may affect them in their essence.

The legal solution in case of confrontation between two constitutional norms is given by the fundamental bases of the Constitution itself, that is to say, the
constitutional norms that recognize human rights are necessarily preeminent, since these norms constitute the declared foundation of the Constitution, the basis of institutionality. In other words, constitutional norms that disregard human rights enshrined in the Constitution will be a dead letter.

Thus, the constitutional rank of the human rights included in the treaties in force is evident from the constitutional texts cited. Moreover, this character is reaffirmed by the certainty that the legal precepts that - by mandate of the Constitution - regulate or complement the guarantees that it establishes or that limit them in the cases in which it authorizes it, may not affect the rights in their essence, nor impose conditions, taxes or requirements that prevent their free exercise as provided in Article 19 No. 26. Under these conditions, norms that conflict with or disregard in their essence the human rights “guaranteed by this Constitution, as well as by the international treaties ratified by Chile, which are in force”, shall be null and void and unenforceable.

11. State duty to respect and promote human rights

All organs of the State, of any of the Executive, Legislative or Judicial powers, must act in accordance with the provisions of Article 5 of the Constitution. Thus, various provisions that outside this context would appear to be restrictive of human rights can only be interpreted systematically within the context given by these international human rights norms; such interpretations will therefore have to be compatible with this context. Thus, for example, the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, the Conventions against Torture, etc., will prevail over any other legal or constitutional norm that may undermine them. In the same way, the Courts of Justice should not be able to hide behind an alleged exclusive competence of the Executive, when human rights are at stake. This essential principle of modern law could be violated by an alleged preeminence of the national norm due to procedural problems, which, in any case, is resolved by national law.

12. Pre-eminence of the international norm

The incorporation of a treaty into domestic law may present doctrinal conflicts with respect to its consequences on the previous domestic law and on the effect that the law derived from the same treaty may have on domestic law. However, in matters of human rights the fundamental criterion is found in the Political Constitution itself, in the Bases of the Institutionality, that is, if the purpose of the Fundamental Charter is to protect the individual and for this purpose it establishes a series of duties of the State and guarantees for the rights of individuals, the international norms that are compatible with this mandate will take precedence over any other national norm.

The Treaty that modified or repealed previous laws dealing with the same subject matter according to Articles 32 N° 17 and 50 N° 1 of the Constitution, in which the participation of the co-legislating bodies that determine the applicability and incorporation into domestic law of the international treaty, giving preeminence to the international norm, is involved.
The problem arises with respect to laws that require a special quorum, different from the one required to approve a treaty as provided in Article 50 No. 1 of the Constitution. However, Article 50 No. 1 of the Constitution does not establish any distinction in this matter, and therefore no distinction should be made. Thus, the incorporation of international norms made in accordance with the Constitution produces the inapplicability of the internal norms that contravene them.

With respect to the relationship between international norms validly incorporated into domestic law and subsequent laws, they are governed by the principle of good faith and compliance with the commitments acquired, which are principles of jus cogens codified by the Vienna Convention on the Law of Treaties, so that compliance with treaties cannot be altered by a law or a subsequent constitutional reform, a principle set forth in Article 27 of the Vienna Convention on the Law of Treaties which determines: “a party may not invoke the provisions of its domestic law as justification for non-compliance with a treaty.” Thus, when faced with a valid treaty incorporated into domestic law and a subsequent valid domestic law, the ordinary judge must give preferential application to the treaty, otherwise the judge would fall into breach of the domestic legal system and its rules of application and in matters of human rights, in breach of the provisions of Article 5 of the Constitution, in addition to incurring the State’s international responsibility. The Commission of Studies of the New Constitution itself, in its session No. 367 of May 1978, recognizing the superiority of treaties over the law, taking up what had already been expressed by Commissioners Alejandro Silva Bascunan and Jaime Guzman Errazuriz in the session of June 20, 1974, recognized the preeminence of the international norm.

Furthermore, the non-derogability of the treaty by law is an essential characteristic of its incorporation into the national legal order and this does not mean the nullity of the subsequent law contrary to the treaty, as pointed out by the Commission of Studies of the New Constitution in session 371, page 2587 and 2588.

13. International treaties in force in Chile

The international treaties in force in Chile incorporate into the Political Constitution rights that are not expressly recognized nor do they have real and effective guarantees. For example, the right to work recognized in Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the right to strike (Article 8 of the ICESCR), the right to free education at all levels (Article 13 of the ICESCR), etc., are not expressly guaranteed in the Constitution.

14. Legislative obligation

The aforementioned Article 5 imposes on the legislative power the duty to adopt legislative measures to make effective the rights recognized and guaranteed in the international treaties incorporated in the Constitution, since many of these rights, particularly those recognized in the International Covenant on Economic, Social and Cultural Rights, require the adoption of legislative and other measures to make them effective. The current Constitution in Chile is inspired by a doctrine that seeks to subtract social power from the State, accentuating its subsidiary role and leaving social rights as mere declarations without constitutional guarantee, in addition without organic or functional relationship with democracy.
15. Objectives of postgraduate programs in Chile

Bearing in mind the factual and normative context, postgraduate degrees can be developed with the objective of providing students with superior competencies and skills in the corresponding scientific field, which allow them to: master the respective phenomenon in general with a high level of depth; specialize with advanced theoretical and practical knowledge in the subjects related to the mention they pursue; obtain highly qualified oral and written communication skills for a professional and academic environment that will allow them to contribute to improving the quality of life of their environment.

In the same sense, the Teaching Methodology should focus on the leading role of the student, providing him with the methodological tools that allow him to develop an autonomous academic work, directed and oriented by the professors, achieving to establish a graduate profile with superior competences and advanced knowledge of the phenomenon of his specialty, both in substantive and procedural aspects.

The graduate will be able to identify, study and solve science problems of a complex nature, design strategies, and communicate them adequately through oral and written means, being able to design projects and write publications, develop teaching in higher education institutions, join public or private institutions, and advise them in highly complex matters. Even more so by participating in civil society organizations in what is called “linking with the environment”.

16. Conclusions

When the norms of the International Covenant on Economic, Social and Cultural Rights come into force, the right to free education is enshrined as an obligation of the State, and at the national level in particular in those States that recognize its constitutional rank, so that the validity of this International Covenant imposes on the State the obligation to finance free education at all levels, including higher education, and obviously such education cannot but be of quality. As for its content, it must necessarily be comparable with the international norms that oblige the State to promote and respect human rights.

The overcoming of structural problems must be thought of in the light of an epistemological vision that overcomes iuspositivism as well as iusnaturalism, since the emergence of social movements expresses new demands for rights that today appear in many political constitutions as mere speeches without efficient constitutional guarantee and without the State assuming its responsibilities as reality confirms. Taking Boaventura de Sousa Santos’ ideas, three crises to be solved by education in general and the university in particular are perceived: “... the crisis of hegemony, of legitimacy and institutional...” [31]. The three crises cannot be solved only by means of the massification of this public good, no. Here tectonic modifications are needed here, understanding that the tasks of the university of the 21st century cannot be those of the university of the 20th century. Without discarding the others, of course. Furthermore “...for peripheral and semi-peripheral countries the new global context demands a total reinvention of the national project, without which there could be no reinvention of the university (...) In the 21st century there will only be nations to the extent that there are national projects for the qualification of insertion in the global society...”.
Higher education more than any other education must assume the paradigm of conceiving its task as an open invitation to face the new with the new, the struggle for the definition of education; schools and universities is open and in the streets, where fundamentally, the first lines are written, and to consider it as a source of changes is not to remain a prisoner of the street, but to be able to understand the democratizing message of the young citizens. This is all the more reason for a graduate education that assumes a student with superior capabilities.

The student will be able to identify, study and solve problems of science of a complex nature, design strategies, and communicate them adequately through oral and written means, being able to design projects and write publications, develop teaching in higher education institutions, join public or private institutions, and advise them on highly complex issues. Even more so by participating in civil society organizations in what is called “linking with the environment”.

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