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Democracy, law and transparency: A new form of legitimation of tax policies facing technological transformations*

Democracia, direito e transparência: Uma nova forma de legitimação das políticas tributárias em face das transformações tecnológicas

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Abstract

Political transformations have shed technological light on issues that have the legality of fiscal. As part of the transformations, transparency is revealed as a necessary mechanism to understand how tax actions are constituted. However, however, it has been effective in purpose, and it has not been effective in purpose, as if it does not occur in the course of the argument, giving the information of this study the possibility of a kind of crisis of such an instrument in terms of tax policy. To reach this objective, which is in accordance with the central objective of the work – and lead to the premise that tax transparency must be understood as a public policy of the State –, as an objective of the work, analyzing both of the law in the democratic paradigm, aiming at the misunderstanding in the concept of neoliberalism. The method adopted will be the analytical. The solution will be diagnosed for, in the end, through the problematic institutes, through problematic research as a solution to, in the end, faced and confronted by the problem itself. An intention, with this, it is not to guarantee the employees as a fundamental tool for the fundamental principles of society, but, more than that, as such, it will only be effective from the democracy of the guiding principles of democracy itself.
Keywords: Democracy. Law. Transparency. Legitimacy. Taxes policies.

Resumo

As transformações tecnológicas têm posto à luz questões que envolvem a legitimidade de políticas fiscais. Como parte dessas transformações, a transparência revela-se como mecanismo necessário à compreensão de como se está a conduzir as ações tributárias. No entanto, tal instrumento não tem sido efetivo em seu propósito, eis que, como se verá no decorrer do argumento deste estudo, informação não é conhecimento, dando vazão a uma espécie de crise de legitimidade em sede de política tributária. Para chegar a essas conclusões, que conformam o objetivo central do trabalho – e levam à premissa de que a transparência tributária deve ser compreendida como política pública do Estado –, analisa-se, como objetivos específicos, o papel do Direito no paradigma democrático, objetivando remover a incompreensão conceitual que incorre em ambos no contexto do neoliberalismo. O método adotado será o analítico. Através dele, serão percorridos os institutos indispensáveis à compreensão e à solução da problemática diagnosticada para, ao fim, confrontar dialeticamente as premissas, obtidas pela própria pesquisa. A intenção, com isso, é de não apenas confirmar a transparência como ferramental indispensável à concretização de direitos fundamentais da sociedade por meio dos serviços públicos, mas, mais que isso, como tal só será eficaz a partir da compreensão dos princípios norteadores da própria democracia.
Palavras-chaves: *Democracia. Direito. Transparência. Legitimidade. Políticasfiscais.*

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1 Introduction

Social complexity, in the digital age, has expanded to various public segments. To a large extent, the cause of this expansion is technological (r)evolution. Traditional environments began to be *colonized* by agents that were previously strange. Horizons and spaces opened up to countless people who immediately found themselves involved in an unprecedented network of information.

It turns out that the accentuated level of information has not robbed human development. Despite the apparent contradiction, the fact is that, despite the endless informational disposition, the State, even following the technological turn to some degree, has collapsed disinformation and misunderstanding. What is meant is that: there are no actions aimed at promoting the understanding of what this amount of information means. In other words, the quantity of information has not been translated into quality.

In the tax field it was no different. As will be seen below, reports are published that are incomprehensible to the general population, which is the true recipient of *public power in public*, to use the typical Bobbian expression (Bobbio, 2015). In this state of affairs, as *information is not knowledge* – as Lenio Streck (2020) has long warned alluding to Alasdair MacIntyre, the public debate on fiscal policies is shielded, since the conditions of possibility to evaluate them in their purpose are clouded, even if they are perfectly constitutionally linked.

Although there is no systematization of studies that accounts for the current state of the art of these issues in Brazil, the above assertion – *that the reports are incomprehensible* – is well established in the research of Athayde (2002), Miranda *et al*. (2008), Santana *et al*. (2009), Antonino *et al*. (2013), Lock (2013) and Beghin and Zigoni (2014), which demonstrate that the quality of the information provided by public institutions is, in general, deficient, considering requirements such as minimum requirements provided for in the legislation, comprehension, complexity, timeliness and detail.

As can be seen, there is a kind of crisis of tax legitimacy, since the common citizen is, in theory, unable to qualitatively evaluate government policies, in fiscal/tax matters. And, from the scenario thus posed, the question that moves this research, as a problem, is: what measure or public action could be established as an appropriate mechanism for the exercise of fiscal citizenship?

The initial hypothesis is that, of course, the increasing promotion of transparent practices is a condition for the possibility of a more effective kind of co-participation between citizens

and managers, imparting high levels of legitimacy in (democratic) decision-making, in terms of fiscal policy. However, we understand that such actions are not enough. It is necessary, as an interpretative motto, to understand the teleological orientation of democracy and, consequently, the function of information, in this same democratic environment. For this reason, we also add the understanding that there cannot be a kind of *formula* for the qualitative improvement of the data transparently informed to a given political community. This will only be achieved – it is repeated – by a hermeneutic understanding of the role of public information in a democratic environment, which is the paradigm in which we are based.

For the development of the argument that moves this research, the method adopted will be the analytical one. Through it, the institutes indispensable to the understanding and solution of the diagnosed problem will be covered in order to, in the end, dialectically confront the premises obtained by the research itself. The intention, with this, is not only to confirm transparency as an indispensable tool for the realization of fundamental rights of society through public services (as so many other academic works have already proposed), but, more than that, as such it will only be effective from the understanding of the guiding principles of democracy itself.

For this reason, it starts – already as an unfolding in specific objectives of this study – from the formulation of a concept for both the Rule of Law and democracy. From this conceptual delimitation, which will close interpretative possibilities in the institutional dialogue, it will be possible to investigate the relationship between Law and its (legal) knowledge, as well as the effects of a mistaken understanding. This will be the way to delimit the study to the tax system or system as a product of Law (Science).

Finally, the scenario of socio-technological transformations is contextualized in view of the role that the Law must occupy from then on, bringing to light the institute of transparency on tax policies, with the power to determine it as a mechanism of legitimation and effectiveness of taxation.

2 Contextualization of this specific state of affairs

The legitimacy of tax policies has been constantly criticized, allowing us to visualize a kind of crisis of legitimacy of fiscal action. The causes of this context are not only (and primarily) the non-return of taxes to society and the consequent non-compliance with the

constitutional project of the common good (Article 3 of the 1988 Constitution – typical of late modernity[2]), but, above all, the lack of understanding of state financing policies.

At the core of this context is the rooting of legal rationality on the paradigm of the neoliberal State, understood as that model to gain contours in the second half of the twentieth century, more precisely in the 1970s, oriented precisely on the unrestricted freedom of the market in relation to state intervention. Or, as Nicola Matteucci (1998, p. 705) will say, that paradigm also known as the "State of corporations", based "on the organizations of large private interests and on their collaboration, at the political level, in state decisions".

In this model synthetically described, the State is more concerned – almost by definition – with the structural analysis of the tax system than with the democratically defined fiscal scope. Considering its paradigm, it makes sense: to remain in the background – in the face of the most determining characteristics of this model – the very horizontality of power typical of the democratic model[3]. In fact, there is a conflagration between the legal requirement of taxes and the inefficiency of public services remunerated by taxation.

Notwithstanding this already latent state of affairs, technological advances have further sullied the legitimacy of fiscal policies. After all, what we could qualify as *taxational thinking* remains interned in a past technocratic environment. In this way, the paradox of disinformation in the information age succeeds.

See, in this sense, the research by the Institute of Socioeconomic Studies (Gerbasi, 2019), focused on the analysis of fiscal transparency. In it, it was found that much is spent (billions of dollars) with the adoption of indirect spending policies. In other words, tax benefits are granted with the purpose of developing the economy, although there is no precise information on whether, in fact, these exemptions promote the much-desired economic growth.

Occasionally in Brazil, this same measurement highlighted that the country *even* has good accounting-tax reports[4]. However, as already mentioned in introduction, the research of

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[2] "A theory of the governing Constitution suitable for countries of late modernity, which can also be understood as a theory of the directing-compromising Constitution suitable for peripheral countries, must thus deal with the construction of the conditions of possibility for the rescue of the unfulfilled promises of modernity, which put in check the two pillars that support the Democratic State of Law itself." (Streck, 2017d, p. 207).

[3] *Radicalizing* the brief concept above, Dardot and Laval (2016), when dealing with the new reason for the world, also identify neoliberalism as a kind of rationality that exerts decisive influences on this same economic orientation. Precisely for this reason, legal institutions serve much more to regulate demands or create another capitalism than to – in the face of a high degree of autonomy – to be a counterweight in power relations – which would be typical of the democratic paradigm. Here, then, is a certain contradiction between democracy (as a political form) and neoliberalism (as an economic model).

[4] This does not mean that the expenditures are opportune in view of national needs. See, in this sense, that "each year, the Union spends about 20% of its revenue and 4% of its GDP on Tax Expenditures. The estimated

Athayde (2002), Miranda *et al*. (2008), Santana *et al*. (2009), Antonino *et al*. (2013), Lock (2013) and Beghin and Zigoni (2014) allow us to understand that the quality of the information provided by public institutions is, among other problems, deficient, considering the minimum requirements provided for in the legislation, comprehension, complexity, timeliness and detail. In other words, *public power in public* – as a democratic promise – is not effective even in the face of the so-called technological revolution that also affects the institutions of the State.

Thus, in addition to ignoring the achievement of the socioeconomic purpose, what we have is a veil that obscures who the recipients of this tax benefit policy are, as well as the value that involves it. For no other reason, effective accountability by the State is compromised, since there is not enough qualitatively sufficient information to promote the inclusion of society in the public debate for the definition of tax policies.

It is precisely in this sense that Célia Brandão (2014, p. 50) warns that informational socialization enables the construction of other meanings (of things), focusing on power relations. In this direction, "the fiscal transparency project through a proposal for the socialization of information intends in a revolutionary way to interfere in the mechanisms that alienate the subject of processes and decisions [...]".

That's the point. Based on this premise, the issue of transparency has been strong. A large number of institutions, norms and the desire for good governance, combined with the introduction of information technology, clarify the indispensability of policies capable of promoting transparency. Furthermore, according to Santi (2014), abuses can be limited, while greater clarification and more information can appear as transformers of tax education.

Therefore, it is imperative to adopt not only a system of transparency that ensures the improvement of oppositions to tax arbitrariness imposed by the State, but also a model that adds quality to the information provided. And for this – it is understood – there is no formula or method. The achievement of this goal will only be achieved through the understanding of information in the context of a frankly democratic environment. This can be translated not only by the public power in public of which Bobbio (2015) speaks, but by a typically republican horizontality of power, also provided by transparency. In other words, going beyond the mere publicity of public acts, what is meant is that this same transparency intones better conditions

expenditure for 2020 is R$ 326 billion, a value very close to the so-called 'social security gap'" (GERBASE, 2019, n.d.).

for the improvement of tax activities, in addition to adding a *democratic plus*[5] in the deliberations aimed at the realization of the rights established in the constitution.

3 On the Rule of Law and Democracy and Its Content Aspect

By projecting a concept that accounts for the research, it is possible to delimit the Democratic State as that model of social and political organization that occupies the place, in the West, of the Ancien Régime. Its seminal moment therefore takes root in the eighteenth century, with the liberal revolutions and the first winds of affirmation of human rights (Dallari, 2000). The Rule of Law, on the other hand[6], can be understood as that guided by a formal structure of the legal system, aimed at guaranteeing fundamental rights, based on the application of the general-abstract law by independent judges (Gozzi, 1998).

Thus, from this very brief definition aimed at the settlement of concepts, it is possible to understand the *Democratic State of Law* as one that not only brings together merely formal elements, but – more than that – that incorporates them into the effectiveness of the regime itself. It is not, therefore, limited to enunciating a State, that is, to *saying it* as a mere promise of organization, but which lays itself bare (by definition) by also pointing out to it purposes, notably, of a material nature. As a specific and opportunely close example of this assertion, let us stay with the Brazilian Constitution of 1988: the national political-legal document *is not limited to saying what Brazil is or how it is organized*. It goes further and assigns its own purposes to the State, such as the eradication of poverty and the reduction of inequalities as a State policy (Article 3 of the 1988 Constitution).

As it is already opportunely associated by what has been seen so far, it is important to point out that the Law is, of course, intrinsically linked to this political system fostered[7] in the

[5] "The Democratic Rule of Law represents, therefore, the constitutional will to carry out the Social State. It is in this sense that it is a normative plus in relation to the promoting-interventionist law of the Social State of Law. It is noted that collective, transindividual rights, for example, arise, at the normative level, as a consequence or as part of the crisis of the welfare state itself." (Streck, 2009, p. 35-36).

[6] In addition, for Coelho (2008, p. 91), a first conception of the Rule of Law is based on respect for individual rights naturally emanating from the creation of a law that enables political coexistence, as well as is subject to it. Furthermore, "the notion of 'Rule of Law' is the result of the reaction against absolutism. The expression Rule of Law was coined in the early nineteenth century to designate opposition to the State of force, police. It alludes, therefore, to the doctrinal repercussion of the political struggle against absolutism and all forms of authoritarianism. On this doctrinal level, the theory of the Rule of Law was constituted, to a large extent, in opposition to that of the legal State, that of the rule of law. This, however, remains in the Anglo-American vocabulary the expression *rule of law* that alludes to the rule of law".

[7] Even though, nowadays, democracy has been suffering shocks, the idea still persists that it should be preserved as a way to avoid a political setback. At this point, it must be argued that it is necessary to resume the original meaning of democracy, thus considering its fundamental assumptions, namely: freedom – including political freedom – and equality – formal and substantial – (Coelho, 2008).

thread of time. After all, it is this same Law, democratically produced, an instrument available to the people and the State for the emancipation of the human species and for the containment of power. Therefore, it is possible to say that the Law, as it is emanated by these predicates, must adapt to the collective interests arising from a democratic society, while it is also a tool of containment in the face of eventual majorities.

In this sense, it is important to emphasize that democracy expands to a dialogue between the divergent interests of society as a means of establishing a standard of conduct, or several, as long as they are lawful and legitimate, with the intention of organizing the State and allowing the emancipation of the human person in an effective way and not only recognizing rights formally written in legal texts. The State must provide for the participation of man in his full potential.

In time, what we want to establish here is not something about theories of democracy in the abstract, but to fix (in particular) the premises of democracy in the 1988 Constitution[8]. On the other hand, the study focuses on the democracy instituted by the original constituent, in which the principles that determine the Law over politics[9] in its highest degree of autonomy are found.

Therefore, the representatives of the people – who cannot in any way confuse state policies with government policies – have the duty to pursue the realization of constitutionally defined rights. This means that fundamental rights, including those of political participation, cannot be restricted to elected representatives, under penalty of instituting a crisis of power and legitimacy. These are the reasons why transparency practices are not limited to the amount of information made available, but, above all, to qualitatively achieve their intent (which is to transform information into knowledge). That is, once again, the point. Therefore, in this horizon:

> In the participatory-democratic perspective, democracy is the control by citizens of their own affairs, which sometimes, though not always, involves instructing government bodies to the reality of citizens' desires. This perspective connotes a relationship of continuity between people and government that is broken when the latter is seen as a representative of the former. It is, then, a short step towards conceiving the government as a body with its own interests and vested with special

[8] In other words, it is not lost sight of the fact that, according to the Magna Carta, all power emanates from the people. And he is the subject/recipient of democracy, understood as part of the politically organized community able to pursue the objectives of the Brazilian Republic, without deviating from the postulates of the dignity of the human person (BARZOTTO, 2005).

[9] Streck's (2018) thesis is percussive, when he argues that constitutionalism translates into placing limits on the political. In other words, limiting power is the role of the law. Its assumption is based on the notion of a binding governing constitution and the notion of a Democratic State of Law.

> state powers with which citizens have to negotiate or make contracts. (Cunningham, 2009, p. 152).

For this reason, it is not unreasonable to say that popular participation is a condition for the possibility of implementing the normativity of the 1988 Constitution. In it (and through it), citizens have the fundamental right to participate in government policy. After all, the State that calls itself *democratic* is necessarily built by the horizontality of power among its citizens. Hence the importance of the indispensable institutional (suitable) dialogues between rulers and governed.

In general terms, in this scenario, democracy cannot be conceived exclusively as procedural/instrumental[10]. It occupies the *status* of a fundamental right, not only because it is affirmed in the Federal Constitution, but because it emphasizes an evolution of meanings that protects and expands the dignity of the human person (Bonavides, 2007). This implies that democracy – as mentioned before – has a *counter-majoritarian*[11] character by fulfilling a role of *resistance* in relation to eventual majorities that may oppose content democracy (Streck, 2017d).

From this, the confluence between the rule of law and its democratic character is signaled[12]. This agglutination staggers a series of means in which the sovereign power must be

[10] In the same vein, Goyard-Fabre (2002, p. 209) proclaims that "this condition, certainly necessary, is insufficient, because the organization of the state community is polymorphous: not only is it embodied in multiple institutions that belong to an open process, which an incessant movement corrects, modifies or enriches, but also this phenomenon of institutionalization corresponds to a principle of organization that determines various types of government or political regimes. It is necessary to grasp the meaning and importance of the juridical-political polymorphism of the States, which is often pointed out and described. Now, in the humanism invoked by the modern era, the great problem to which political law must respond is to make the system of government rules and norms compatible with the rights and freedoms of the citizen."

[11] In another form of analysis, from the perspective of the Principle of Tolerance, Kelsen (2000, p. 182) argues that "since the principle of freedom and equality tends to minimize domination, democracy cannot be an absolute domination, nor even an absolute domination of the majority. For domination by the majority of the people is distinguished from any other domination by the fact that it not only presupposes, by definition, an opposition (i.e., the minority), but also because, politically, it recognizes its existence and protects its rights."

[12] Regarding distrust or pessimism about democracy, Jacques Rancière (2014, p. 91-92) observes: "Let us consider things in order. What do we mean exactly when we say we live *in* democracies? Strictly understood, democracy is not a form of state. It is always below and beyond these forms. Short, with a necessary and necessarily forgotten egalitarian foundation of the oligarchic State. In addition, as a public activity that counteracts the tendency of the entire State to monopolize and depoliticize the common sphere. Every state is oligarchic. The theorist of the opposition between democracy and totalitarianism agrees without any difficulty: 'one cannot conceive of a regime that, in some sense, is not oligarchic'. But the oligarchy gives democracy more or less space, it is more or less invaded by its activity. In this sense, the constitutional forms and practices of oligarchic governments can be called more or less democratic. The existence of a representative system is usually taken as a pertinent criterion of democracy. But this system is itself an unstable compromise, one resulting from contrary forces. It tends towards democracy to the extent that it approaches the power of anyone." For this reason, participatory democracy gains relevance, as it allows the people, individually or organized, to demand a (re)conduct to the political action of the State.

constantly scrutinized by the governed, to the extent that democratic legitimacy arises and not just procedural.

The premise elsewhere is justified in the following terms:

> The previous analyses have shown that the political [public] right is the mainstay of the institutional and organizational acts of power that give human existence a public character. The coexistence of men, in all its sectors, is subject to legislation and regulation by the bodies constituted by the governing apparatus of the State. Today, the producer of legal norms even acquires, in public law, a European and international scope. In the political-legal space thus expanded, the law imposes the obligation of its precepts and rules, and its enforceability, which commands their application [...]. (Goyard-Fabre, 2002, p. 307).

On the other hand, to reinforce the thesis of material democracy, it is important to highlight that the democratic context is not strictly reduced to the legal rules that define democracy. It's bigger than that. For this reason, it requires a look at implicit issues that involve the democratic horizon.

Precisely from this point, Levitsky and Ziblatt (2018) ratify the previous premise, because for them democracy involves "informal" rules, which contemplate mutual tolerance and political responsibilities. When, ultimately, there is no political responsibility, the robustness of constitutional norms is weakened; therefore, there is the right to democratic participation, having as a link, for example, transparency, which comes to have an arbitrarily attributed, dysfunctional and essentially procedural or episodic meaning. Thus, it is from the limits of this shallow understanding that we want to escape in this study.

In this sense, Shapiro (2006) emphasizes the issue of the legitimacy of the State, which, according to contractualists, corresponds to the idea of agreement and, for this reason, presupposes a synallagmatic relationship[13]. When not observed, it leads to a mischaracterization of democracy, consequently incurring in the political illegitimacy of the State itself.

In addition, there is the imbrication of *political democracy* with *social democracy*. In clearer terms, what is intended is the assurance and development of democracy. However, this does not occur immediately, when concatenating representative democracy with direct democracy. It occurs, therefore, when conditions are met for the participation of the people in the drawing board of government projects, not limited to actors formally vested with political powers (Bobbio, 2012).

[13] "The fundamental principle of democracy has always been that, in matters that affect life and collective interests, the people know how to govern properly." (Shapiro, 2006, p. 248). It should be noted, in time, that the expression that the people know how to govern must reflect the historically conquered rights of a timeless nature. Therefore, when this premise is not observed, the regime ceases to be democratic.

For this reason, the idea of transparency is insisted on as an essential element in the *Performance* of social treatment. Democracy, by itself, is pluriversal and does not admit exclusive action without the consent of the central authority – the people. The genuine legitimacy of fiscal policies depends on it. Thus, it is preliminarily concluded, in this topic, that transparency, at whatever level it occurs (digital or not), is the core that connects power and (democratic) legitimacy. From the perspective of a Democratic State of Law, popular participation in the conduct of public affairs, especially in the elaboration of tax policies, is the only way to raise awareness, emancipate and legitimize the exercise of public power[14].

4 On Law: legal order and/or science?

Over the years, schools, philosophers, and jurists have attempted a universally conceived definition by means of developed methods, by empirical, abstract, transcendental approaches, etc. However, all attempts have ended incomplete[15]. Even so, it is important to point out that the work of yesteryear was not innocuous, but fruitful, even in what is currently dispensed with as a way of knowing the Law.

It is in this sense that Ferraz Jr. (2015) will say that the search for the phenomenon (to be known) has a cultural nature. Therefore, the defining potential of Law is not stable. It is transmuted according to circumstances in which it can be verified. That is, the definition, with a universalist pretension, ends up being too generic and abstract, so that the possibility of a static and neutral determination does not operate.

Aware of this, the subject who intends to know the Law begins to compartmentalize it,[16] thus focusing on contingency issues. Here is one of the problems that the Philosophy of Law invokes. It should be noted that this focuses on the essential, on the essence of the phenomenon and not on its (essentially particular) aspect. It intends to investigate the nuances of the problems of Law (Kaufmann, 2015).

[14] "The nexus between the principle of representation and the public character of power, including understanding representation as a way of representing, that is, as a way of presenting, of making present, of making visible what would otherwise remain hidden." (Bobbio, 2015, p. 139).

[15] In this sense, Hart (2012) points out a premise that neither Law nor any other structure of society can be fully understood without considering external and internal statements of what is observed. Although the author's effort to define Law is substantial, it is also incomplete, since, according to Streck (2017d), the predicted author still falls on the three central theses of positivism (social sources, separation of Law from morality, and discretion).

[16] "[...] because each one who studies the term [Law] and its content properly will be directed towards a formulation of an answer based on their theoretical, philosophical, sociological and other inclinations that make up the basis of the intellectual and experiential formation of the individual" (Abboud; Carnio; Tomaz de Oliveira, 2015, p. 45).

Consequently, Law comes to be seen in a watertight way, since the Philosophy of Law is more willing to inquire about the conditions of possibility to know its object of study – Law – than to provide possible answers of broad human understanding or definitive. In addition, what we have is a disparate scenario between Law, itself, and Law as a Science. In a tight synthesis, what we have is the old dualism already verified in Jellinek and, later, radicalized with Kelsen[17].

In any case, finally, Law is conceived in a kind of double dimension. That is, the legal phenomenon is different from legal knowledge, more associated with the subject and its way of knowing, and the former with the object that is known. Ferraz Jr. (2015, p. 32) points out in the sense of ratifying this premise, when he says that "knowledge of the law, [is] as something different from it, [...] the distinction, therefore, between right-object and law-science requires that the legal phenomenon achieve a greater abstraction, detaching itself from concrete relations [...]"[18]element.

Thus, the hiatus between Law and the Science of Law, resulting from the disconnection from *concrete reality*, brings in tow pernicious effects to society. In other words, the disregard of a given reality (as a whole) in favor of a (meta)reality (in part) renders the *promotional aspect* [19] of Law inoperative. After all, the concern of jurists (and of the State) is often exclusively located in the syntactic and semantic planes of Law (Science) and not in the pragmatic-concrete[20], reaching a third dimension of language, in which meaning occurs at a socio-practical level.

[17] Recovering this debate, it is then known that Law is the object of a knowledge that is presupposed to be scientific, which immediately gives rise to two approaches of analysis: what this object consists of and how we access it through our knowledge. It is the epistemological problem, that of the scientificity of legal knowledge, articulated with the ontological problem, that of the universal concept of Law. Ontological understanding is parallel to linguistic understanding, because the signs and words that represent Law in popular thought, and even in scientific thought, do not always coincide with what ontological research proposes as Law. These signs and words mirror the usual, concrete and practical understanding that common sense has of this object, revealed in the language and semiotic expressions generally used to allude to law as an experience (COELHO, 2004, p. 110).

[18] In this regard, Streck (2017b) exposes that Kelsen, influenced by the Vienna Circle in his Pure Theory of Law, develops a metalanguage for his theory to the extent that everyday language is impure. It means that in order to *understand* the Law, conditions are created for it (abstractions); a second-level language is created, which is delimited and closed to what is foreign to it.

[19]Bobbio (2007), in his studies from Structure to Function, assigns his research to a horizon that breaks, but does not detach, with the structuralist conception of Law; in fact, it advances to the functional aspect, while the idea of a guarantor State no longer satisfies the demand for a dirigiste State. Herein lies the promotional aspect of the Law that defines the social direction (this, *in casu*, the one democratically defined in the 1988 Constitution).

[20] On this point, the explanations of Ferraz Jr. (2014, p.33-35) are appropriate, who explains, according to Comte's idea: "We must, according to him, recognize the impossibility of reaching the immanent and creative causes of phenomena, accepting facts and their reciprocal relations as the only possible object of scientific investigation. That is, [...] the task of the jurist was increasingly limited to the theorization and systematization of legal experience, in terms of a *constructive unification of normative judgments* and the *clarification of their foundations*, ultimately leading to the so-called 'legal positivism' (*Gesetzpositivismus*), with the self-limitation of the Science of Law to the study of positive law and the establishment of the thesis of the 'stability of law'".

Notwithstanding this perpetuated divorce between theory and practice, it is also worth noting the alienation[21] caused by legal technology[22] , given the technicist use of Law by jurists. Consequently, the technological knowledge of Law builds boundaries to its object, thus vilifying the reality that lacks and needs the reach of legal protection. On the other hand, alienation removes from the subject's horizon real problems that are not reached[23] by the domain of Law, for simple methodological reasons.

In short, Law is a phenomenon and, as such, can be studied from different perspectives. Thus, when legally approached and defined, it suffers from epistemological limitations. In this aspect, the projection of human reason prevails – *paradigm of the philosophy of conscience*[24] – in which the legal phenomenon ends up being defined and endowed with meaning within the limits set by the subject himself (and not by the phenomenon), that is, according to his subjectivity.

The product of this rationality is revealed in what is Law and the Science of Law: the first forgotten by positivist ideals[25]; the second, recommended. The effects of this option, by

[21] Although Luiz Fernando Coelho's (2003) Critical Theory of Law is not the underlying paradigm of this research, its definition of alienation comes in handy, since the knowing subject, or the subject *of* the Law, detaches itself from the primary foundation of the legal phenomenon and promotes a "state of unconsciousness" of facts/problems that equally concern the Law itself, consequently rebutting its function.

[22] "In these terms, a technological thought is, above all, a thought closed to the problematization of its assumptions – its premises and basic concepts have to be taken in a non-problematic way – in order to fulfill its function: to create conditions for action. In the case of dogmatic science, to create conditions for the decidability of legally defined conflicts." (Ferraz JR., 2015, p. 59).

[23] As an example, Engelmann (2010) makes a critical analysis of Pontes de Miranda's Theory of Factual Support, first stating the *incompleteness* of this theory because it does not engender a condition of possibility of inserting in the domain of Law situations/facts that were not previously foreseen by the legislator in the *should-be.* Then, it concludes that this conception (of fact provided for in a norm and its material existence producing legal effects) is insufficient to account for new rights/facts.

[24] '"Philosophy of Consciousness", in which the subject 'constructs' the object, through general laws of the 'spirit'. Now, behind this 'defect of origin', of the 'methodology of law' is the old discretion (space occupied by practical reason in 'cases' of insufficiency of the 'plenitude' of theoretical reason), which, not by chance, is what sustains the main enemy of democratic law: *legal positivism*. To discuss positivism is to discuss paradigms. To this end, it is necessary to understand that the main characteristic of positivism(s) – discretion – is umbilically linked to the paradigm of subjectivity, that is, to the subject-object scheme." (Streck, 2017c, p. 67-69).

[25] For Bobbio (2006), the doctrine of legal positivism can be summarized in seven points. The first concerns the non-evaluative character of the right, as it conceives it as a fact and not value. The second point mentions the definition of the right, which is a coercive element. In point three, the question arises regarding the sources of law, that is, the law is *"sub specie legis".* Fourthly, there is the reductionist role, since law is the norm (theory of the norm); However, the fifth point deals with the legal system, no longer conceiving the law as a norm, but rather as a set of norms. The penultimate one deals with the problem of interpretation that reveals the strictly *declarative role* of the right and not productive, for example. The latter makes explicit absolute obedience to the law.

Science, is the subtraction of *factual reality* in favor of the syntactic and semantic levels[26], [27] of Law, undermining political and social demands *that are only* legitimate to the legal phenomenon in the name of the banner of stability, predictability, immutability and neutrality – legal certainty.

Certain that Law, in its theoretical bias, reveals itself to be closed and covered by dogmas, the jurist now has the mission of unveiling what dogmatic study has despised. Therefore, the understanding of Law transcends its cognitive delimitation. This means that Law is something empirical, which represents a whole that sometimes reveals itself to be inaccessible as it actually is, leaving only fragments of a much larger phenomenon.

As a result, it can be said that the Science of Law is not/was not able to capture all its practical reason. "In this way, the issues that arise from the practical problems that involve the daily life of Law are underestimated by his theory [...]" (Streck, 2017a, p. 110); consequently, other problems related to the structure and function of the State (of Law) are undermined by a legal perspective.

In short, it is evident that the phenomenon of Law is broad. A result of the Kelsenian tradition, the balance is the separation between the Science of Law and Law itself. And from this separation, there is an alienation from what is and what it can become; thus generating the exclusion of matters immanent to the legal phenomenon that constitute an interest/duty of the Brazilian State. Certainly a problem, if we consider the distance already observed in the gap between the quantity of information and its quality (which we already know to be a right and also a true condition of possibility for democracy, that is, for *public power*, to finally occur *in public*).

[26]Machado Segundo (2008, p. 44-45), when dealing with legal dogmatics (Theory or Science of Law), already outlined concerns about the boundary lines drawn by dogmatic study. Therefore, he corroborates the undertaking, under analysis here, regarding the unraveling of the legal phenomenon at its various levels by saying that "the simple application of the rules does not exhaust the task of the legal scientist, being only an important but insufficient technique. At this point, therefore, the lesson of Pontes de Miranda deserves to be highlighted, for whom the mere knowledge of the norms, and of the logical relations that are established between them, is as indispensable as it is insufficient for the adequate understanding of the Law. [...] Law *is expressed* through norms, but it is not limited to them, and it is therefore not correct to say that its study is limited to describing them as dogmas".

[27] For example, "Kelsen, therefore, privileged, in his theoretical efforts, the semantic and syntactic dimensions of legal statements, leaving pragmatics to a second plane: that of the interpreter's discretion." (Streck, 2017d, p. 39).

5 Tax Law: corollary of Positivism and its democratic (dis)commitment

Ávila (2012) teaches the construction of a Constitutional Tax System in the form of a limitation to the State's power to tax. This limitation has content restrictions that define the direction that the Legislative and Executive branches can institute and supervise, that is, tax obligation relationships. Therefore, the National Tax System is not only clothed in its formal aspect.

However, the emphasis elsewhere seems to be obscured, while today's tax policy is concerned only with the procedures necessary for the institution, inspection and collection of exactions, without, however, considering the substance that makes taxation legitimate and democratic: transparency and respect for the taxpayer and his guarantees. Now, in this mismatch, as well as the ideological crisis predicted by Rossavallon (1997) in relation to the Welfare State, in which decision-making is questioned in the face of the limits imposed by a fiscal crisis from a technical-bureaucratic body, there is – as a specific proposal of this research – a crisis of tax legitimacy, in which, even in the midst of the so-called technological revolution and a reasonable dissemination of information (GERBASI, 2019), satisfactory knowledge is not achieved (Athayde, 2002; Miranda *et al*., 2008; Santana *et al*., 2009; Antonino *et al*., 2013; Lock, 2013; Beghin; Zigoni, 2014).

In parallel to this understanding, it should be made clear that Tax Law is studied, on a daily basis, as a legal system[28], as a set or repertoire of heterogeneous elements that interact with each other at levels of coordination and subordination tending to an end under a unitary understanding. From then on, the Science of Tax Law splits[29] with (positive) Law, since it pays attention to legal propositions, with the aim of lending it validity without intersecting with the *pragmatic-concrete plane*.

Proceeding in this way, the formation of the tax system reflects an end in itself, a lack of concern with its own legitimacy, forgetting that legality is not always confused with this same legitimacy. Here, then, there is an imbrication between Law and politics, with the former being responsible for extracting the latter from tax engineering. It is clarified, in time, that what is

[28] "Systematic thinking, traditionally employed in tax law, has a strongly simplifying character. In addition to being based on determinisms, eternal idealities, it is restricted to positive law, without opening itself to understand it from the injunctions that the extranormative imposes on it. There is a certain assumption according to which society is formed by watertight systems: economy, politics, law, ethics. Systems that would obey certain universal laws of communication between them, and that would be based on exclusive and universal binary codes. Thus, reality itself is understood as divided into compartments." (Folloni, 2013, p. 394).

[29] This split is a legacy of nineteenth-century legal positivism, as it was argued that scientific knowledge could only be "accessed" in the form of systematic thinking (Vesting, 2015).

being said is not the isolation of political/economic issues from the legal debate, but rather the lack of commitment to the pursuit of the ends recommended by the 1988 Constitution by tax means.

Undoubtedly, the conclusion is firm that, in times of complex social and technological transformations, the understanding and handling of Tax Law, in an essentially systemic way, does not meet the purposes of taxation itself. In this way, it is promoted a distancing from its purposes, including those that legitimize it, such as, for example, the republican principle[30].

The criticism to be raised, about these terms, is that it is imperative to make a methodological disinternment of Tax Law. It would thus consist of a more advanced look, that is, beyond the simplifications arising from legal technology. It would be an epistemological rupture.

In this direction:

> Proposing to overcome the confinement of positive tax law, to overcome strictly dogmatic knowledge, depends on demonstrating the methodological gain that this overcoming can provide. It's a challenge. Here and there, the doctrine identifies points in which the permanence in the legal sphere, without consideration of other knowledge, is unfeasible for the interpretation of the law itself. These are empirical examples of the need to overcome the strictly dogmatic view. (Folloni, 2013, p. 395).

Why then overcome the strictly dogmatic view? The answer, to a large extent already given by Folloni, ironically requires an interdisciplinary effort. It requires going beyond the established Law. Here, Law and politics are intertwined (again, in an inescapable dialogue). After all, taxation, much more than a sovereign action, is a *mechanism* available to the State to achieve political will. It is in this will that the concerns of this study orbit, since taxation, like the norm, can ensure or extirpate human/fundamental rights, functioning as a directive for action.

It so happens that this directive is found in the Brazilian Constitution. In it, the points of departure and arrival of the State were established, which thus constitute the limits and directions that this same State and its government must obey and pursue without deviating (Scaff, 2007). Any deviation would mean an upheaval, an open door to authoritarianism and disrespect for the rights historically conquered by a given political community.

[30] "The republican principle vivifies each article of the Constitution, irising it and making it the bearer of its message of respect for the people and their sacred interests. And it is fundamentally in the exercise of taxation that the idea of Republic must predominate, so that, against this same people, injustices and arbitrariness are not committed." (Carrazza, 2004, p. 77-78).

Certain of this, taxation starts to imprint and develop a political and not just a legal role; after all, according to Buffon (2017), the formal institution of a Democratic State of Law (Articles 1 and 3 of the 1988 Constitution) determines its factual implementation which, in turn, engenders inclusive social spending in Brazil, adding also the democratic participation of society.

Certainly, the inexistence or inefficiency of inclusive public spending generates a kind of democratic disconnection, since taxation, without the inclusive agenda, is susceptible to its own illegitimacy. This is because, according to Rocha (2005, p. 141), "the political meaning of the law originates from the moment when modern democracy [...] constitutes itself as a new form of politics, providing the right of society to enunciate". However, *how to state* if the conditions of taxation are opaque? This is the point that the discussion initiated so far intends to cross.

They are opaque to the extent that, for example, there is a lack of transparency (and awareness) of the real purposes for which the proceeds of tax collection are being destined. It is important to emphasize that, although tax acts are public, they end up retaining/omitting *information-knowledge-awareness* in an indirect way. In other words, the understanding of fiscal policies is veiled by a set of techniques that escape the reality of the subject, who is not able to apprehend this state action, incurring that distinction mentioned introductorily: *information is not knowledge*.

Thus, the fact is that the misunderstanding of fiscal policies[31], which only seek their legitimacy in legal dogmatics, is illegitimate[32] . This stems from the democratic rupture in relation to the State and taxpayers, since they are not given the opportunity to speak and understand a central activity of democracy.

Furthermore, the lack of legitimacy reveals an arbitrary authority[33] , thus clashing with the democratic context. Power then falls into the hands of *minorities* who may be uncommitted to social welfare and to the democratic regime itself.

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[31] In addition to the academic research that allows us to conclude a certain lukewarmness in the public information provided, as observed with Athayde (2002), Miranda *et al*. (2008), Santana *et al*. (2009), Antonino *et al*. (2013), Lock (2013) and Beghin and Zigoni (2014), it is also relevant to point out that more than 22% of the Brazilian population does not even know the taxes they pay, according to a survey commissioned by the School of Finance Administration. In it, there were 2,016 interviewees in 336 municipalities in the country. Although the study is more than a decade old, we find no reason to understand that the scenario has changed substantially, at least.

[32] He corroborates the thesis of Rocha (2005, p. 141): "The law is, therefore, as previously stated, the principle of legitimacy of the law. And, in this sense, the law is only legitimate if it is based on the democratic principle and respect for human rights, which concretely enable society to claim them, going beyond the power of the State, since they are political-symbolic, even and mainly, when positive law does not expressly contemplate them."

[33] Similarly, Rosanvallon (2010, p. 233) argues that: "*the legitimacy of impartiality and the legitimacy of reflexividad are associated with the development of new democratic institutions. But citizens are also increasingly more sensitive to the behavior of government owners. Desean ser escuchados, tomados en consideración, hacer*

Finally, the study and handling of Tax Law, whose foundations are delimited exclusively in the dogmatic scope, ends up causing, as we seek to highlight in this topic, a split with democracy, since it ensures the right to participate in the conduct of the *res publica,* making tax policy illegitimate. Furthermore, it is in the implementation of fiscal transparency (clarifying its actions) ensured in the realization of rights that the political participation of society is made possible.

6 Socio-technological transformations and the (necessary) revision of Law in democracy

World society has been the protagonist and spectator of great and rapid changes, as never seen before. In the last century and in the current one, humanity has advanced and changed its way of behaving. As an example, there is the television set. This, notably, proved to be an apparatus that literally entered people's homes, leading them to transformations in the way they see the world. Television, then, became the epicenter of a society that consumed, with euphoria, what was broadcast on television. It became, in this way, a source of information, entertainment and, consequently, a vector that directly or indirectly guided the action of individuals in society.

However, its centrality did not admit interaction of the recipients with the sources that propagated ideals, that is, television did not provide interactivity in relation to what it was willing to transmit. There was, rather, interactivity of the people who watched it. This intersubjective relationship was a consequence of a strictly audiovisual communication system, with radio and TV. Therefore, we saw a revolution in the diffusion of information, a mass diffusion (Castells, 2005).

Subsequently, the massification of information had isomorphic contours, given the exclusive protagonism of the enunciating sources. Therefore, there was no active role of the spectator/listener. This has caused mass culture to dominate people's imagination without, however, information and ideas being able to be filtered or analyzed properly. Thus, the role of communication remained easy, since it was a one-way street.

The result of this way of communicating was understood as imposed information, leaving people only to observe and incorporate it into their way of life. The latter, definitely, was influenced and determined in an *oligarchic way*, therefore, and the lesson that can be drawn from this phenomenon could not be different from the lack of transparency. Now, were there

valer su p unto de vista; esperan que el poder esté attentive to its difficulties, que se muestre verdaderamente preocupado por lo que vive la gente común.".

external constraints to what was transmitted? Did the information suffer any distortion when it was transmitted?

What is intended, therefore, is that even the technological revolution, which implies a new human action, needs transparency, awareness and mastery. Something that cannot be attributed to one-sided sources of communication. Nevertheless, it is in this scenario of technological and communicational transformations that a shift in the way of producing them has been detected. Mass audiences began to fragment and remove the protagonism of hitherto traditional sources. We now have the internet, for example, which allows the individual a greater and more elastic interactivity of what is disseminated about information (Castells, 2005).

In addition, society began to have a *new virtuality*, organizing itself in a network, making the human relationship even more complex, in its openness and maintenance to interactivity. To this extent, a new reality was built[34] in which the old spectators began to play a leading role in the formation of informative content (Castells, 2005).

What is intended to bring to light is the *imposing way* of providing information when the time was hegemonically audiovisual. Likewise, the State incorporates a dogmatic protagonism of disseminating its own information without clarifying political commitment. That is the point: it only makes public data and numbers in order to give as undeniable the fulfillment of its duty, and the content of these is irreproachable, because it is dogmatic. In other words, information – it is repeated – is not converted into knowledge. Therefore, even in the face of the informational catalog provided by the State, the ideals of a public power in public – as a democratic promise – remain clouded.

However, under this focus, the political action of the State and the understanding of its information are inherent to the fundamental right to good administration[35], thus opposing the simple profusion of incomprehensible information. It is important to highlight that when the State does not pay attention to social changes, including technological[36] and communication, it

[34] "The architecture of the network is and will continue to be open from a technological point of view, enabling broad public access and seriously limiting governmental or commercial restrictions on this access, although social inequality manifests itself in a powerful way in the electronic domain." (Castells, 2005, p. 441).

[35]"Fundamental right to efficient and effective, proportional public administration fulfilling its duties with transparency, motivation, impartiality and respect for morality, social participation and full responsibility for its omissive and commissive conduct." (Freitas, 2009, p. 36).

[36] "The technological revolution has resized the relationships of human beings with nature, the relationships of human beings with each other and the relationship of human beings with themselves. New technologies have produced important development and improvement in the living conditions of humanity, contributing to occasionally reinforce the enjoyment and exercise of certain rights, but they have as a setback to these advances certain technological uses and abuses that cause a serious threat to freedoms, which has required the formulation

loses the power to communicate, splitting with the established democratic postulates and with the promotional/functional aspect of the Law.

The conclusion of Freitas (2009, p. 47) *corroborates the above premise*, which "supposes a strong inclusion of citizenship in the spheres of control, towards the realization of the key idea of the 'Constitution that administers'". As a result, transparency is now understood as a right of the citizen/administered, especially in a scenario of information/knowledge in a network. The State has the duty to direct its action to the subjects of society at a level of interaction sufficient to provide an understanding of what is happening and also to enable the decentralization of the technique of political decision from the exclusively institutional axis.

Thus, the proposal to make the management of fiscal policy transparent is the same as allowing the syndicability of decisions that project state tax action, as well as the promotion of inclusion, even if digital, of the citizen, making him able to participate in the political exercise. It's your right, after all.

In summary, and aware of the profound changes that society undergoes as a result of technological (r)evolutions, the Law, democratically defined, cannot escape its improvement. That is, it becomes compulsory to incorporate such transformations into its dynamics as a way of preserving timeless (political) rights. Pérez Luño (2012) concludes, in this sense, that new technologies have considerably modified the relationship between citizens and public entities. But it is necessary to go further. It is necessary to transform information into true knowledge, effectively horizontalizing power.

7 Tax legitimation in the postmodern scenario

The technological environment in democratic countries has increasingly pressured the State to account for its actions (*accountability*), since the demand for improvement in the provision of public services has been on the agenda of the day (Texeira; Limberger, 2016). This fact is due to reflection. Would it be possible, in this court, to discuss the legitimacy of public policies vis-à-vis the *establishment,* considering that there are currently many more mechanisms and levels of social interaction with the State? Obviously, yes. As previously mentioned, technological revolutions have brought important changes in people's way of life,

of new rights or the updating/adaptation to the new challenges of the instruments to guarantee existing rights." (PÉREZ LUÑO, 2012, p. 20).

creating interactive channels of high prominence in the political field. Such as, for example, the concept of *cybercitizenship*, coined by Pérez Luño[37].

Finally, society's awareness *of* and *where* public resources are being applied constitutes public information capable of promoting a democratic debate of better adequacy and destination (Limberger, 2015). Otherwise, from the impossibility of transparency, with an educational character, the information will be nothing more than a tangle of numbers disconnected from the reality experienced.

By aligning transparency, society's trust in the State emerges. The act of trusting implies, even if subjectively, an act of legitimizing; however, transparency cannot be confused with publicity (Limberger, 2015). This does not reveal the meanings of political acts. They *just* go public. And this is very different from that publicity that symbolizes public morality committed to citizenship.

In this vein, the Executive and Legislative Branches have the role of bringing the "ought to be" of the Constitution closer to the "being" of reality through the implementation of public policies (Morais; Brum, 2016). In this regard, it is evident that fiscal transparency, with the objective of reducing inequalities and promoting social development, is now occupying the field of public policies. We want to say (and base this idea on the debate): tax transparency must be understood as a public policy of the State.

The persistence of the adoption of public policies of transparency seems to be essential, after all. As Rossanvallon (1997) and Morais (2011) have already adduced, the Social State is also going through a fiscal crisis. Promoting the well-being of all puts a burden on public spending. This is due to a new fiscal rationality perpetrated by a broad political-social dialogue.

Therefore, Tax Law is not restricted to the dogmatic conception of yesteryear. Taxation performs a social function that is subject to an idea of political justice[38] – legitimation – from its thinking to its practice in a contemporary horizon. In this step, fiscal transparency, as a

[37] "*In a recent work, entitled El concepto de 'ciudadanía' en una sociedad que cambia, Michael Walzer expresses with clarity the basic resupuestos of the communitarist posture in relation to the ciudadanía. Según se despega de su planteamiento, liberalism ha forged una noción formal y adjectiva de ciudadanía, como algo que es exterior al suj eto; mientras que, para el comunitarismo, la ciudadanía constituye un vinculario originario y necesario de relación entre la comunidad y sus membros. Esta concepción 'hace de la ciudadanía el corazón mismo de nuestra vida.*'" (Pérez Luño, 2012, p. 20).

[38] "Descriptive semantics determine the concept of political justice; it, however, does not legitimize it. It shows that the concept signifies, for the relations of law and of the State, a normative obligation of the third level and that the recognition of these ethical obligations is not only expected, but also required. But it does not clarify why such a demand is justified. Since justice is a concept of legitimation, the legitimation of political justice that is still missing represents a second-level task or a meta-legitimatory task." (Höffe, 2005, p. 47).

proactive and pedagogical work of the State, is embodied in *a condition of possibility of constitutionally adequate taxation.*

Peremptorily, it is established, in a hyaline way, that the legitimacy of the State's activities depends not only on its adaptability to technological transformations as a form of attention to social dynamism, but on its pre-understanding in the democratic paradigm. Public action cannot be formatted only in the pro-formula model, because it is in its content that the fiscal whole is revealed. This is only apprehended through effective transparency actions. In other words, this means that the technological revolution, which allows for ever higher levels of transparency, finally fulfilling the democratic promise of *public power in public*, will only reach an effectively material dimension of its meaning if the foundation of the Democratic State is understood. Here is the point: if *information is not knowledge*, as alluded to in the introduction, it is not enough to formally dispose of the information. It is necessary to understand its teleological orientation. Hence the initial statement that the process is hermeneutic. There is no method.

8 Final considerations

Thus, as can be seen so far, the objective of this study was, by highlighting the right to transparency as a condition for the possibility of exercising *public power in public*, to produce the necessary constraint to state practices that do not translate information into effective knowledge. From this, some points, in conclusion, deserve to be highlighted:

(1) Democracy is a complex and dynamic institute, attentive to mundane changes with the aim of ensuring historical achievements of humanity. It cannot be conceived only in its form, but also in its content, certain that, and only in this way, it can exercise its legitimizing role. Therefore, thinking of it as a seasonal or merely formal phenomenon will be a setback on what has been achieved.

(2) Democratic language is public. As a result, the participation of society in the State's action is guaranteed, even in technical matters, such as taxation. The State's action is not private. It is with transparent labor that the legitimacy/adherence to public policies is promoted, since this would respect the public/collective debate capable of including and emancipating the citizen.

(3) To this end, law and politics cannot be compartmentalized or separated. If this occurs, there will be a dysfunctionality of the entire public organism, since a fraction of reality will be

dominated disregarding the whole. The implication that arises from this is the alienation from the *concrete-reality,* entrenching the process of legitimation of the Law itself.

(4) Therefore, Tax Law extends beyond the boundaries of legal dogmatics. The crossing of limits is conditioned as a way of not breaking with democracy, allowing the emancipatory awareness of society in relation to fiscal policies, after all, legally democratic participation is guaranteed.

(5) Considering the technological transformations in society and the theoretical statutes of Law, the primate of transparency is a condition for the possibility of tax legitimation, since the educational nature of transparency, in addition to being the duty of the leading State, illuminates the political action of all in a conscious way. While *data* is revealed and produces knowledge, there is a constitutionally adequate and, therefore, also legitimate taxation.

At the end of all this, it is possible to establish a common thread, which runs through each of the conclusions listed above: the hermeneutic element, which plays the role of a vector of rationality in the production of these reflections. It is precisely hermeneutics – as an epistemological paradigm that underlies the *questioning of the meaning of something* – that allows us to put question marks in settled understandings about tax legality, confronting a strictly bureaucratic, formalistic and dogmatic view of Tax Law. What does fiscal citizenship mean and what are the ways that make it possible in the Brazilian context? It is precisely the openness to these questions, provided by this hermeneutic movement – aimed at a better understanding of legal phenomena – that allows us *to transcend* dogmatic knowledge, unveiling new nuances for the debate on taxation, removing its opacity. From legality to tax legitimacy. And, as a final warning, tax legitimacy is not built with *naïve bets* on transparency driven by technological facilitators, but rather with the understanding, on the part of state agents, that, in order to provide citizens with access to public debate, it is necessary to provide quality information. In other words: *tax transparency* must be understood as a public policy.

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