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Paradoxes of Subjective Social Rights

Ricardo Rivero Ortega

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**Paradoxes
of Subjective
Social Rights**

Ricardo Rivero Ortega

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Abstract

This paper questions the overuse of the category of **subjective right** to meet social needs (**education, healthcare, care, decent housing**) or to protect historically disadvantaged groups. As a solidarity-based alternative, it proposes a return to the idea of **objective Law**, adding the legal regime of **obligations** and recovering an understanding of Law as a technique for balancing the interests of society as a whole.

Keywords: Objective law, subjective rights, obligations and duties, social rights.

1. The excessive rise of subjective rights

Contemporary legal systems have undergone a significant evolution in terms of the recognition of new rights. To the many collective benefits (**education, healthcare, care, minimum income for social inclusion**) have been added demands for particular recognition, entitlements linked to adverse circumstances or to the historical discrimination suffered by certain groups (on grounds of gender, sexual orientation or other factors such as age). From a humanist perspective, both **solidarity** and the **legal compensation** of so many grievances seem plausible, but their effective realisation raises practical and theoretical problems that we are going to set out.

All good ideas are good up to a point, **the point** at which they begin to generate paradoxical or counterproductive effects. Owing to opportunistic abuses or interpretative excesses, some new **subjective rights** project consequences not previously taken into account onto the **general interest**, the various priorities of **budget execution** or the **duties and obligations** of other private parties: repercussions, therefore, on legal positions that also deserve some consideration.

Think, for example, of the impact of the **right to housing** of vulnerable people on the assets of property owners whose interests are affected by eviction moratoria. Or of the costs that adapting public services to demands associated with the **mental health** conditions of people deserving of consideration may entail, with equally legitimate repercussions on other users. Because today it may be enough to invoke any psychological condition to assert a *right* to be exempted or treated in a singular way.

In an attempt to mitigate these “side effects” of the new rights, it is worth asking whether resorting to the category of the **subjective right** is the ideal option for achieving their purposes; I mean, whether there are not other alternatives that could serve to achieve similar levels of protection without adversely affecting other people or society.

We raise this thorny question because the greater the number of people who aspire to have the Administration guarantee their status in the form of **subjective claims**, the harder it will be to meet all the demands simultaneously. The individualisation of the exercise of rights

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