



Poder, Ordenamiento Jurídico, Derechos (Spanish Edition)

Francisco Javier Ansuátegui Roig

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La presencia de derechos fundamentales en un determinado Ordenamiento jurídico condiciona y caracteriza de un modo básico a dicho Ordenamiento en su conjunto. En efecto, el análisis de los derechos fundamentales desde una perspectiva positivista permite considerarlos como piezas claves de un sistema jurídico. En el presente trabajo se pretenden subrayar algunas consecuencias de la anterior presencia, sobre todo por lo que se refiere a la específica configuración de los criterios de identificación normativa de un sistema jurídico. Asimismo, se hará referencia al significado que adquiere la relación Derecho-Poder -cuya referencia es imprescindible para comprender el sentido del Derecho en la modernidad - desde el momento en que los derechos fundamentales forman parte de ese Derecho. Por último, a partir de la superación de una concepción estrictamente formal del Estado de Derecho, como la kelseniana, se señalarán algunas relaciones entre los derechos fundamentales y la dimensión material del Estado de Derecho, considerando que los primeros son, posiblemente, no el único pero sí un dato básico definitorio de la segunda.

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