

EDITORIAL

(English)

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Inventing a thinking that “matches up with mankind”

That the law cannot be the same in extraordinary as in ordinary times can be understood by anyone. That some faculties are transferred to the executive power due to promptness of action is also easy to understand. That some inadmissible limitations are imposed on liberties could also be understood. Nonetheless, unless things are directed towards a state of security, the legislation in an emergency regime must be subjected to respecting the law. The more powers are given to the executive, the more urgent it is to look after the respect and protection of rights and liberties that even in crises are constituents of the Rule of Law; furthermore, it is the time for even more active control institutions: mandatory for the Parliament, Justice and the press.

The state of emergency cannot be a law-lacking state in which the pure violence of the ruler is exercised. Protecting the social body is not only a matter of public health but also a matter of law, given that what constitutes a social body is the adherence to a common heritage of rights and liberties. Forgetting these rights or violating them is reducing the social body to a simple juxtaposition of individuals: “there is no society, only individuals”, as Margaret Thatcher said (1987, p. 30). This has as a consequence the beginning of the neoliberal cycle.

The wellbeing of the social body demands that once the state of emergency is over all of the measures infringed upon the rights and liberties guaranteed by the constitution are derogated. “And maybe too, as it is after every great existential commotion, rebuilding the social body on the grounds of human rights” (Rousseau, 2020).

Legitimizing market economy? Human rights are to blame! The dissolution of the family? Human rights are to blame! Elected politicians are unable to rule? Human rights are to blame! The rise of populism? Human rights are to blame!

This anti-human rights discourse has become one of the mainstream ones with great acceptance both in the left and the right wings. Since long ago and in the five continents (in countries such as Hungary, Poland or Brazil), these discourse has influenced some governments that in the name of the redress of democracy have undermined freedom of the press, independence of justice, the right to association, university freedoms, the respect to an intimate life and free disposal of the human

body and sexual relationships. Likewise, in France, this discourse is supported by some intellectuals that have forgotten how in the preface of the Declaration of the Rights of Man and the Citizen (1789) is written that "the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and the corruption of governments".

Far from being negative to democracies, human rights are, indeed the key to achieving it. In the first place, because they are the instruments through which *people* become citizens. Human rights take individuals out of their social, geographical, and cultural determinations, and thus of the inequalities, to define them as citizens equal by right. Therefore, calling human rights into question is wishing to establish a political setback that removes to the individual or makes us forget our condition as citizens and puts us in a dependency situation that makes us submissive to the political leader that thinks for us. In the second place, because human rights establishes a space for the relationships between people. This might cause surprise, given that it is now commonplace to affirm that human rights sanctifies individuals and destroys every possibility of the common good.

Nonetheless, another perspective is also possible. One that does not conceive human rights as individual liberties, but as "relational liberties", according to the expression by Claude Lefort (1980, 1987). When the 6th articles of the Declaration of 1789 recognize the citizen's right to participate in the making of law, it invites them to relate with one another to define the common will; when the 11th article proclaims the freedom of communication, thought and opinions, it invites the individual shut less within oneself and be more open to others, to relate with other people. The rights of man were not the base upon which a private space for individuals to lock themselves was created, but on the contrary, a public space in which the body and the ideas of every person would always be confronted to others bodies and ideas thanks to their free circulation.

From all of this rights, the forgotten principle and nonetheless inscribed in the first articles of 1879's Declaration is that of *public utility* —and not those of private or heritage interest as it is nowadays— to establish social distinctions. *The principle of freedom of the press, the watcher of democracy*. Regarding the demonization of the media pushed by Trump, Orban or Bolsonaro, it is necessary to reaffirm that freedom of the press is not a freedom as the others: it is the freedom that gives a face "to freedom itself", as said by Camus (2012) in 1939. The journalist is the one who makes facts, events, declarations and images circulate; it is the one that makes public information about the living conditions of French, about the cooperation mechanism in the suburbs, about the situation of women in Syria.... is the one who invites to thinking whenever she or he polemicizes about a book, a movie, an exposition or a scientific, moral or political opinion. In summary, the journalists make visible what the powerful would like to keep hidden from the public eye, they encourage deliberation on public

matters and put citizens in better conditions for exercising control on their rulers beyond election seasons.

In this sense, the freedom of information is the most valuable constitutional right, given that it is the foundation and guarantee of all of the other rights. The citizen is not free of choosing who to vote, having an opinion, a profession, a place to go for a vacation or how to invest financially if there is no free information, a true condition that makes possible the effective exercise of citizenship. With that in mind, the final recipient of freedom of the press is not the journalist, is the public.

Without a doubt, the influence of money, the condolence, the little adaptations of truth or the preference for the scandalous are also features of "certain type" of press. This is another reason for highlighting the importance of the independence of the press, which, opposed to what is frequently implied, is not a corporative principle for protecting the interests of journalists, but a principle that guarantees to the readers that those who have as a job to inform them are doing so free from any pressure of private or public interests. Another reason for underlining that a pen is not enough to become a journalist, nor picking up the phone enough to be a great reporter. Being a journalist is an art!

The press is the eye that allows the citizens to see and to make demands to their officials. Subtracting power from that eye is making the citizens blind and allowing democracy to turn into an... authoritarian democracy, as said by Orban or Putin or....!

Another principle is the hospitality one, which is a fundamental right and must not be called into question in these times of multiple crises. In the history manual of Jules Isaac (1964), the students of the 50s and 60s decades learnt that

since the most distant times of prehistory, multiple human migrations have taken place. It is easy to suppose what might have caused them: when human being were hunters, fishers and farmers, they roamed searching for abundant fields for hunting and fishing, as well as more fertile lands. Migrations continued during historical times and continued to take place in our days with the same effects: mixing among very different populations and exchanges between civilizations. (p. 43)

Following this, the Global Compact for a Safe, Orderly and Regular Migration points that

migration has been part of the human experience since the dawn of history and, in times of globalization, is a matter of prosperity, innovation and sustainable development, as well as connecting links among societies from the same and other regions.

This historical continuity completely destroys the «thesis» of the great replacement or the great savaging of our societies due to current migrations. Its supporters openly recognize it given that they affirm that there would not be a true breakthrough without

a constitutional reform and without breaking a few international treaties. Indeed, this is because current law, constitutional and international, establishes that everywhere, any human being, has the right for the recognition of its legal personality; the right to freedom of conscience, of expression and association; right to family life and free circulation. Current law also establishes that human beings, without exception, have a right to fair and adequate labor conditions that allows her or him to have a decent existence, right to social equality, right to a dignified life, to education, to healthcare and the right to an effective reparation in case of violation of any of these rights. Additionally, kids have the right to the protection demanded by their conditions as minors.

All of these rights are derived from the universal hospitality principle discussed by Kant (1958), which benefits *all human beings* and, thus, all and every migrant. Sharing home with another human being is a value that comes from immemorial times, for example, in the *Odyssey* (2009), Book IX, p.195) this can be found: "Zeus the hospitable who conducts guests and wants them to be respected!". This value is forgotten when the political debate is based upon the idea of a "migration crisis" that needs to be controlled, but there is no migration crisis but a climate crisis that pushes men and women to seek a living in other lands, an economic crisis that forces them to relocate their companies and a political crisis that constrains them to flee from dictatorships and wars.

Migrations will continue: men and women will continue to cross borders as they have been doing to this day, and the law must provide them with the means they need to achieve full membership of the societies they settle into and highlight their positive contributions to coexistence. This law must be a transnational one, given that it is in the name of the principle of national sovereignty that States violate the migrants' rights in benefit of those of their nationals. Montaigne (2010) wrote that "Every man has within himself the entire human condition" (p. 196).

Now, the *principle of common good of peoples*. The current time is in a quest for new words to describe itself. For example, the principle of loyal cooperation between peoples instead of the principle of sovereignty, or the principle of the common for expressing the climate matter, the taxation of the technology giants, the management of the migrant flow and the fight against corruption are global affairs, common to peoples and, thus, can only be tackled through post-national institutions and policies.

Words are not just signs, they are also meanings. They articulate representation of things that make sense, they embody a history that produces images in every individual and expresses even more in ourselves than we express with them. For that reason, making efforts to name things correctly is democratic demand.

The good John Paul II was right: "Let's not be afraid!". A bit provocative this pope, after all, because, being objective, there are thousands of reasons for being afraid:

fear of losing our jobs, fear of having to work more and for less, fear of consuming adulterated food, fear of shaking hands with our neighbors, fear of homelessness or losing our minds, fear of going to a hospital and getting ill out of it, fear to wars, fear to an earth that expels ashes in one place and rises the sea levels in other, fear of viruses... This fear thinking is dangerous because it creates an atmosphere of submission and resignation; it leads to closing the doors and windows, to entrench in a home instead of building barricades in the streets. It is old fashioned thinking. Deep inside this thinking of fear that venerates the nostalgia of times gone by, there is nothing more than fear of democracy.

The strength of this thinking of fear lies in that "it says the truth" and in that anyone can feel identified with it. It is "true" that everything is crumbling to pieces, that family is disintegrating, that school is a place for competition, that the State is weakened and that the media are deplorable. nonetheless, this "truth" is only a part of the way that leads us towards the comprehension of the contemporary world, but it is only a small part because stating that nothing is as it used to be is not saying much. The thinking, that does not consist of crying for the past nor happily laughing for the present, comes into the stage in this precise moment for distinguishing, recognizing and identifying the practices and behaviors that shape society and putting them into the ideas and words that will allow being conscious of it. When Voltaire, Diderot, Rousseau and Condorcet thought about their society, they did not observe the past that protected the feudal bonds, but rather invented the words (social contract, citizen, republic) that would allow society to leave their former organization and build a new way to coexist.

The current democratic individual is not a failure nor a tragedy, but the joy of existing itself, of exercising and continuing human life, which is, as Brassens sang, our only luxury down here. Thus, everywhere, in schools, in neighborhoods, in towns and workplaces, the democratic individual creates, imagines, dreams, intervenes, and establishes a new way of sociating: local interexchange systems, common sharing of customs, and so forth. All these forces for the future are already there, sometimes luminous, but waiting for daring intellectuals to bring them to light. So, as John Paul used to say, let's not be afraid, not even from God, because there is no certainty of its existence!

During his acceptance speech of the Nobel Prize in Literature of 1957, Albert Camus declared that: "no work of genius has ever been based on hatred and contempt". These words, like many others of the author of *The Rebel*, have particular relevance in our days, times in which hatred and contempt have taken the streets, the walls, the minds and bodies. Conflict is the characteristic of every society and, by extension, the essence of the labor of jurists. The right to families with the conflicts caused by separations, deaths and births; the labor law with the conflicts among bosses and employees, but also among big and small entrepreneurs, among employees from the

public and private sector; the commercial law with the conflicts among distributors and farmers, between consumers and superstores; the constitutional law with the conflicts among the National Assembly and the Senate, between the parliament and the judges, between the president and the prime minister. . .

Consequently, the political matter is no conflict, but the means through which society assumes this conflict inherent to it. The authoritarian way is to prevent the expression of conflicts by silencing those who display them. The democratic way is to propitiate a space for the expression of conflicts. The first is based upon the idea that one of the parts of the conflict has the truth and the other part is wrong and is an enemy of the truth, reason why it should be, in the best of cases, reeducated, or in the worst-case scenario, suppressed. The democratic way implies the recognition of a fair share of reason within the positions of each part of the conflict, that the parts are adversary, but not enemies and, thus, might find reasonable political answers. "That matches up with mankind", as Camus said, given that conflict is not only inherent to societies, but also constitutive of every person. There is an expression for naming this existential conflict: case of conscience, i.e., that situation in which someone is indecisive between two or more possible "truths", in which conflicts with him or herself and must practically come to peace to live.

Hatred and contempt do not make the way easier to the «practical agreements» but it does to the social discomfort and, at the end of the road, to populism. It is popularly said, "The best is the enemy of the better". To this, the comedian Pierre Dac (1972) added: "the worst is the friend of the excessive".

Inventing and imagining the post-pandemic world is to venture towards the poetry of a way of thinking that "matches up to mankind", without hatred or violence. Utopian? What does it matter? Would that be a defect?

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