THE LAW IN A "LIQUID SOCIETY"

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Abstract

Justice means ranking different values to give priority to one another. The issue of the hierarchy of values brings with it a logical matter that every philosophy of law tries, explicitly or implicitly, to solve by assuming a fundamental value, to which all the other are subordinate. All these statements are verified and can be exemplified with the general stages of evolution of the philosophy of law, which have gradually proposed a hierarchy of values, with different accents in Antiquity and the Middle Ages, followed by their autonomy in modern times. The idea from which the present philosophical thinking has made its emblem is the pluralism of values, that is, their heterogeneity and heteronomy. The best formula is to streamline society under the influence of communication. At the same time, however, there is an opposite trend: the legal seems to impregnate all the social tissue and to impose its formalism and procedures. All social, economic, political, and even ethical interpersonal relationships or erotic intimacy increasingly become subject to legal norms and arbitrariness by law. Knowing that the great jurists felt the need to substantiate and complete the concept of law with certain philosophical positions, we wonder what the consequences of this contradictory situation are for the renewal of the interpretation of the law.

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1. Introduction. Justice and juridical philosophy

If justice means hierarchizing different values to give priority the one to one another, then it should be able to evaluate the respective values in question. But such an assessment would lead the legal systems to the situation described by Gödel's theorem, which states that any formal system is either incomplete or contradictory. Therefore, a judgment of the values and not of the given facts, or of the relationship between facts and values, goes beyond the limits of legal theory, logically coming to the philosophy of law. The issue of the values' hierarchy brings along with it a logical problem that, explicitly or implicitly, the philosophy of law tries to solve by assuming a fundamental value to which all the others are hierarchically subordinated. Different from a jurist or juridical theorist, the philosopher judges the law from this point of view, somewhat outside the law, but basic for the law. (Rawls, 1999) That is why great jurists, who have renewed the law, felt the need to base their entire conception on certain philosophical positions.

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All major revolutions in the field of legal thinking and all the profound changes to the law are therefore the work of cooperation between jurists, legal theorists and law and state philosophers. (Kelesen, 2005)

These simple affirmations are verified and can be exemplified with the general evolution stages of the philosophy of law. The thinkers of the first cultures and civilizations had a synthetic view on the world. For them, what is the foundation of reality and, consequently, what is valuable and meaningful, is the principle of everything that exists and can exist and characterizes the state of being: you are all the more full, the more you are attached to the foundation of reality, the more your person embodies more the value and significance of it. Everything that exists is more complete, more valuable and more meaningful as is the more entire embodiment of this principle. It is the essence of what exists, it is the Being. Therefore, the basis of everything that exists in this world: people, society, states and laws come somewhat from the outside, from something that is truly real, valuable and meaningful, from the Being. All state regulations and all laws are good to the extent that they are in agreement with the Being. If they deviate from their essence, they are evil. Due to the same synthetic attitudes, in the beginning of the philosophy of law, its elements and aspects are mixed with moral and political thinking in general, and so lay the things with the practice and legal theory.

It may seem paradoxical, but the more pronounced is the difference between heaven and earth, the divine Absolute situated in transcendence, and this world that is its creation, relates to the history of Christianity. In terms of the difference between heaven and earth, the problem of coexistence between spiritual power and temporal power had to appear. The idea of theocracy seems to be the best possible realization of the earthly city, about which St. Augustine spoke of. It may even be considered that the Augustinian ideas inspired the kings' coronation institution. But this "other authority" will raise many concrete problems, on the one hand, by making popes (starting with the decree of Constantine) territorial sovereigns mixed in international conflicts, on the other hand, making the Church in each state a power that is not necessarily obedient to the Emperor.

Of course, considered in principle, the supremacy given to the authority of the Church and its representatives is nothing but the contestation of the omnipotence of the king or of the emperor, and the obligation not to obey his good, but to the divine laws which impose upon him as to all his subjects, that moral values are hierarchically superior to political values. But, in fact, conflicts have multiplied, both for seemingly minor issues, such as the appointment of bishops, and for serious issues, such as the Church's support for some governments against others. A series of schisms appear in the Church for political reasons, while fights in which excommunication and denunciations intersect (for example the conflict between Henry IV of Germany and Gregory VII in the eleventh century) the two powers wanting to reduce the other at his disposal. The independence of the two powers (temporal and spiritual) appeared to some as the solution. But, despite these good intentions, it was difficult for both powers to live peacefully together. Two

major themes are raised during these polemics or wars between the powers that passionately take in all the thinkers of the Middle Ages: What is sovereignty? What is legitimate? What are the limits of power? Is there a value over the states? In what values and within what limits could a community of states be made?

It was only in the eighteenth century that political philosophy directly attacked these essential questions. What matters most to the modern philosophy of law is the paradigm change. The painting of Rafael, the School of Athens, illustrates very well the difference between the two theoretical models of reality by the difference between the gestures of the two philosophers at the centre of the painting: Plato raises his hand to heaven, invoking transcendence, the principle of what exists above this world, while Aristotle holds its hand in this world, proposing the immanence, the overlap between the world and the principle that constitutes reality. As Aristotle is the starting point of the Western science method, when modernity begins to impose the power of scientific knowledge with it, the idea of an immanent model of the world, which has its own cause, not outside itself, is also required. The most clearly formulated idea of modernity appears in Spinoza's philosophy, which says: God or nature. With the new model of reality, we move from the idea that human nature is the product of a transcendent outer world essence to the idea that man is the product of this world and, to a certain extent, and vice versa.

It is therefore better to build a state and a justice that relate to what is in this world and what is universal to this world, than to start with the higher and outer values of this world. And even if Thomas Morus (1478-1535) dreams of an ideal city, his dream is called Utopia (1516), not the City of God. At the level of this world, the departing point is the natural state of man, characterized by the war of all, against all (the Latin proverb, which in several variants appears in many authors is: *Homo homini lupus est*). And value is no longer something outside and over this world, but it is something that is appreciated by as many people in this world and by virtue of which they can negotiate with each other. This is how the idea of the social contract is born (Codoban, 1996).

This immanent model of the world, this paradigm of modern thinking, demands the autonomy of values, rather than their hierarchy. Here is also the modern realism that starts from what it is, not from what it should be: each has its own value options, and their correlation lies with the social contract, which is most appropriately embodied by the state. Between all the direct consequences, political autonomy, its removal from the jurisdiction of morality by Machiavelli, is, for the beginning, the most significant for the philosophy of law. Kant then described public law as a system of laws that provides an institutional framework under the united will to "participate in what is right." An association of a people within such a legal system results in the institution called the "state". "A state (*civitas*) is the union of a multitude of people under the rules of law." Such a state is formed for rational reasons in order to eliminate the unregulated status of nature, in which the arbitrariness of the person necessarily contradicts the equal arbitrariness of the others. Towards the end of classical modernity, for Hegel, the state is the

culmination of the incarnation of freedom and law. The state integrates the family and civil society and fulfils them. The three "moments" dialectically implicated - the state, the family and the civil society – compose the "ethical life". In a Hegelian state, citizens know and accept their place, know their obligations, and choose to accomplish them. The individual has "substantial freedom in the state" and his supreme duty is to be a conscious member of the state (Clam, 1996).[1]

2. Post-modernity, a "liquid society"

The most synthetic and frequent characterization of the current age of Western culture and civilization is postmodern. If we want to see in the theme of communication the border line between modernity that made knowledge and postmodernity as themes, then the new ontological model imposed by this theme making is characterized by the exclusion of any transcendence, as it was thought of in Antiquity and the Middle Ages. At the same time, the refusal of any modern ontological model, of depth, origin or history, too. If for Antiquity and the Middle Ages everything had to be steady and traditional, and for modernity, which introduces the movement, everything must take the form of evolution, progress, for postmodernity, nor traditional stability, nor the progress towards something new and good, nor evolutionism are acceptable. Postmodernity is modernity that has lost the ideals and illusions of a historical direction of social development pre-determined by the "objective" laws of human history. Finally, this ontological model is no longer based on an archetypal relationship between principle and its manifestations, that is, by analogy, not but by difference. What arises is an ontology of the "significant surface," without transcendence, not even in the weak form of depth or origin, and articulated by the principle of difference, not of resemblance. Such an ontological model is in operation in the most accomplished formulas of postmodern philosophical thinking. Especially to those French thinkers who, like Derrida, Lyotard, Deleuze and Baudrillard, have succeeded in paradoxical Hermeneutic-Semiology or Heidegger-structuralism synthesis. Beyond all these too abstract formulas, we could say that the emblem of this significant surface ontology is any screen of our communication tools - computer, telephone, television, etc.

Highlighting of a specific ontological model is likely to guarantee the philosophical consistency of postmodernity as an epoch, but it cannot, unfortunately, also give a perfect measure of distance from modernity. Moving from one theme to another may appear as a thoroughgoing, because in a more general register, knowledge is the particular case of communication with the object. Then, both the thematic of knowledge and of communication produce criticisms, not ontologies. What is also common here is that both the theoretical critique products of the two themes use the existing and fossil energy of the original ontological model. They only work by deconstructing, first, the substance or form

[1] In addition to postmodernity, the terms used to characterize the current phase of the evolution of Western culture and civilization were: late modernity, second modernity (or the second modernity), or reflexive modernity.

in the profit of the subject, the second, of this subject in the profit of a language for which the world is reduced to a mere significant area. The best formula is to fluidise society under the influence of communication.

The idea from which the postmodern philosophical thinking has made its emblem is the pluralism, i.e. heterogeneity and heteronomy. Finally, the current model of the world means more than the emphasis on the autonomy of values, underlining their plurality. Individuals push the modern autonomy of values beyond the relationship of the social contract so that they no longer have anything in common and act completely apart from one another, pursuing exclusively their own interests and disregarding collective interests and needs. There is a danger of dissolving common knowledge, civic culture and collective institutions, at the risk of the crisis of the modern idea of citizen and community.

Together with the beginning of the millennium and the century, Zygmunt Bauman finds an inspired metaphorical name for what appears to be the essential quality of postmodernity: the fluidity or fluidity of postmodern society and people's lives. As postmodernity, liquid modernity means the end of the Panopticon-based (Foucault, 2005) power era that had to control the territory to give the illusion of social order and stability and was linked to the mutual commitment of the powerful and the subjects. The modern democratic state, conceived as a national political entity, thus diminishes its power and renounces its functions under the pressure of "other imagined political identities based on religious, linguistic, cultural, territorial, and ethnic or gender differences." In late modernity and postmodernity critical theories have supported the point of view of individual interests, desires and privacy to defend them from the modern political legislator. Totalitarianism was considered to be excessive intervention by the modern state, usually legally justified in the sphere of the individual.

The common destiny involved by the modern national state is eliminated by actions consistent with the individual interest of people who choose their identities. In fact, the Western national state ceases to be the subject of nation's project as a community to become the most general company managing a territory: citizens pay fees in the form of taxes and receive certain public services. In this new type of state-firm, there is no need for the great theories or justifying narratives of modernity because there is an ostentatious ideology of uncertainty and fear. Zygmunt Bauman observes that in the new type of state, the new formula of legitimation is the policy of fear and safety, because the reign of modern and modern bureaucracy has been replaced by the pressure of individual interests and fears. An "emergency state" producing is facilitated by the growing fears of personal safety and calls for the isolation of "human wastes" - immigrants, criminals, asylum seekers, etc. The national state is incapable of protecting its citizens against the whims of the elites of the world market, and can only legitimize their power through uninterrupted warnings against terrorist threats and other social threats. (Bauman, 2007)

Jiří Přibáň, in the book he published, describes the situation in a synthetic and clear way: "Instead of democratic deliberations and conflict resolution solutions,

the current" democratic" policy is the policy of customized and fragmented egoisms unified by the atmosphere of fear. The public disappears under the pressure of fragmented private interests, individualized lives, and insufficient liquid emotions to revive joint bonds. State agencies, including the army and the police, are too burdensome and expensive and are therefore replaced by more flexible and mobile private agencies. Politicizing the global village requires the transfer of the competence of local agencies, while removing the state of the nation from the legitimate power of democracy. The common public sphere is increasingly replaced by more sophisticated surveillance techniques that feed on the politics and culture of fear and personal anxiety as if the main political interest were to keep districts and districts safe and free from suspects kind. "(Přibáň, 2007)

3. Conclusion. Liquid society and the law

What happens, more specifically, with a legal system in a liquid society? In modernity, the law - and the whole legal system - has been associated with predictability, reliability and manageability, and has been considered as a solid ground for strengthening the liaisons and institutions of society. Obviously, the fluidization, liquefaction of society has not left the law unchanged. The law has adapted to social liquidity and to the techniques and operations of deregulation, devolution and disengagement in the name of "instrumental rationality and rational cost-effect calculation" that "melts "all the obstacles and social obligations that stand in its way." Therefore, the law can hardly can base a public or political life that could integrate and stabilize today's liquid society as whole.

However, there is a paradoxical situation arising: the legal seems to try to impregnate the entire social tissue and to fix this fluidization of the postmodern society. Because far from fading, the legal value occupies a prominent position in the Western world. Law becomes the supreme court to regulate social life, and here, in the post-modern West, almost we are always in a situation of law.

It is, as if against the general spraying of values, the juridical infuses all the economic, social, political and interpersonal relations between people. All social, economic, political, and even ethical or intimate interpersonal relationships are increasingly beginning to be subject to legal norms and to the rule of law. Of course, everything can be explained by what Tudor Vianu called the variation of the sphere of values: for some people certain values have a greater weight than other values. And in a culture of a given age, the predominance of certain values can become a general characteristic of that age (Vianu, 1997).

But why is it now - and to the detriment of other values - the law the absolute formal court? Is it a sign, if not modern bureaucracy, of a new social formalism? Or is it the only ritual that the postmodernist fluid society recognizes and can call?

Maybe it would not be desirable to transform all relations between people into a legal matter, but laws seem to be the only solution that exists to preserve, as far as possible, the human side of the relations between the postmodern individuals of the liquid society. What is clear is that, for the legal values we are dealing with a

least divergent movement, if not even contrary to Bauman's diagnosis. Examples are numerous, starting from superficial and funny and continuing with serious and even critical ones. The American joke says: if for Freud, the father of psychoanalysis, when two people make love, there are six people in bed, the two, each with his parents, now in the US the situation is different, there are only four, the two with the their lawyers. The many sexual abuse scandals lately seem to confirm this tragic-comic situation: ambiguous aspects of erotic relationships are increasingly legally solved. On the other hand, love, family relationships, friendship, etc. are human relations rather than legal relationships. When the child requires certain rights to his parents in court, we have the feeling of a diminution or a crisis of the human side of relationships.

As regards medicine, an urban myth tells us that instructions on drugs are written in such a way as to prevent any further possibility for the firm to act in court for possible health effects arising as a consequence of taking these medicines. On the other hand, patients' relationships with their doctors - and even those with their lawyers - are legally regulated for malpractice.

Of course, the law seems to have the right place especially in terms of our economic activities, for example when I buy or rent something, and even legal regulations extend when we travel, when we take a taxi or a train and our luggage is lost, or when the airplane we need to catch a connection, is delayed. All these activities are supervised by law, as are our fiscal relations with the state. But to what extent do we have the right to demonstrate against political decisions and to what extent are political decision-makers entitled to make certain decisions? How legal is the decision not to approve a demonstration or to politically demonstrate without authorization?

From some point and somehow against the diagnosis of a fluid society, we can have the impression that the law infuses all our social relations and that in Western societies we have to deal with an inflation of law. As more as our perception of law is wider than the formal sphere of law involving certain customs, conventions, etc. This perspective may prompt us to question the existence and immediate significance of the fluidization of society, of the "liquid society" and, in turn, to ask what is the profound significance of infusing the law into the mass of social relations.

In a fluid society everything "flows" faster: time, life, social relations, economy, trade, etc. and - as a consequence – the law too. Why is the law in a constant change / amending? Because the set of rules (principles and legal norms) has the purpose (the role and the purpose) of creating and always maintaining a framework that circulates and supports almost all the social relations that are born, change and / or extinguish during the "walking"; weather if this legal framework is corresponding (sufficiently rigid and, at the same time, flexible enough, i.e. to allow, but to impose conduct), it is able to stimulate the development of socio-economic relations.

The law comes from behind, as through state-regulated legal norms the need to regulate new social relations (which thus coats the legal relations), as well as those that change / transform over time (relationships that feel the need to support them

legal rules appropriate to the period in which they are running) are covered. The speed of changing social relationships or the emergence of such relationships proves the accelerated walk of the world and explains the need to continually adapt legal norms in order to always provide the legal framework to support the increasingly agitated and tumultuous life. However, the speed at which the socio-economic relations change / transform / metamorphoses determines the multiplication of the legal norms that come to support those relations established between the different individuals and / or legal entities; this has resulted in real legislative inflation, which - although undesirable - proves to be necessary and useful.

As an exemplification, we mention two fields where social relationships are rapidly changing. One is that of taxation: the need to order and subject to normative rigor the methods of setting taxes and collecting public revenues requires a continuous search for the most appropriate legal rules (to see, in this regard, the numerous legislative changes both in our country - see the Tax Code and the European Union - see the Directives and Regulations in the same field). The second area of "everyday life" is the multiplication of same-sex relationships throughout the world: given the flexibility that many countries have already demonstrated (allowing marriage between such persons or at least the establishment of a legal regime to protect their partnership), it is also necessary - see - to create a permissive legal framework (which has not existed so far) to ensure that such categories of persons have clear rules for the establishment of a civil partnership (given that, currently, according to our Constitution, marriage between such persons cannot be recognized).

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