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Human Rights and Justice in a Multicultural World

*We don't have any right;
it is always the other who has rights.”
(Jankélévitch)*

Abstract: This paper intends to discuss some contemporary issues on human rights and democracy related to the concept of justice. Is the set of individual rights that is assumed by western democracies really universal? If so, how are they supposed to be interpreted? On the other side if I take into account the “other” and pluralism in a serious way how to conciliate different concepts of justice? Taking Jacques Derrida’s approach of justice as its standpoint this paper aims to stress the difficulty to achieve a unique concept of justice as well as to think justice in the sphere of international law and the problem of ensuring human rights in the international order. Western democracies has becoming more and more multiethnic and multicultural and the set of rights that is at the center of the legal order has to be interpreted in a dialogical sense, one that assumes difference and plurality as its starting point. The plurality of conceptions of the good and the impossibility of establishing a unique concept of justice demands the re-creation of a democratic sphere where the dissent and the conflict could be experienced and, at the same time, the legal order needs to ensure individual and group rights against majority’s dictatorship. The main goal of this paper is to re-think the interpretation of law in a multicultural scenario in which it is not possible to have only one criteria of justice and difference and pluralism are envisaged are values themselves.

Keywords: law; democracy; human rights; justice; deconstruction.

Contemporary societies are marked by contingency and differentiation, which hinder the establishment of a single notion of the common good or the definition of unquestionable political goals. The democratic political project depends on the recognition of this openness of meaning for its viability. Although it is widely recognized that rational consensus and purpose cannot serve as the ends and means of political action, a degree of closure is necessary for democracy to be experienced. Total openness is not possible, as it risks compromising the basic principles that constitute political society. Openness, contingency and mutual recognition are only possible if they originate from a common position that is somewhat closed and in which some rules are institutionalized. Different demands and opposing forces in society dictate the need for some decisions to be made and imply that some risks exist in

those decisions. It is precisely through the need to establish some degree of closure that the law plays an important role in enabling the achievement of human rights. In this way, law becomes an enabling instrument – or one of the instruments – of democracy. The argument explored in this paper takes as its premise the non-universalist ethics founded on the idea of alterity, where the *other* appears as a central category. The problem of the *other* (or the issue of alterity) was a central concern of the most important 20th Century philosophers. Probably one of the most important and thought-provoking reflections on the theme can be found in the work of Emmanuel Levinas, and another may be found in the work of Jacques Derrida. Although it is true that Derrida is used in many of Levinas' reflections, it is also true that the Derridian concept of alterity differs from Levinas' perspective in some ways. If contemporary democracies are becoming increasingly multi-ethnic and multicultural, the perspective of the philosophy of difference can help build a non-universalist vision of human rights, where the other can be fully understood in all of his alterity. This understanding is also affirmed by the idea of justice as *aporia*, as formulated by Jacques Derrida. If justice cannot be understood within the law and its content cannot be precisely defined, how can any claim of universal ethics be sustained?

Based on the work of Emmanuel Levinas, Derrida considers ethics to be the first philosophy (i.e., ethics as a relationship among people). Derrida's analysis approaches ethics from the perspective of responsibility, which takes language itself and its construction as a response to the *other*. The construction of political discourse and/or the construction of legal discourse must precede any decision or any form of mediation. Deconstruction reveals the dimension of responsibility behind these constructions. The ethical element within this formulation is the assumption of responsibility for the other. In this infinite and complete statement of alterity, the other establishes himself in all of his alterity, despite the impossibility of comprehending this difference.

According to Levinas¹, ethics brings into question the freedom, spontaneity and subjectivity of *the self* and the *other*. For Levinas², justice defines and is defined by this ethical relationship with the other (i.e., in response to the suffering of the other), towards which the subject has an infinite responsibility. However, this ethical conception of justice is also consistent with a political notion of justice in the sense that all ethical relationships are always located in a particular socio-political context, which implies different ethical views and leads to the necessity of choosing among them. In *Totality and Infinity*, ethics is understood as a relationship of responsibility, not a totalization of the other. The relationship

¹ In this respect, see Simon Critchley, *The Ethics of Deconstruction: Derrida and Levinas*, 1992.

² Emanuel Levinas, *Totality and Infinity (Totalité et infini)* 1990.

between *the self* and the *other* is a notably asymmetrical relationship of radical inequality.³ The transition from ethics to politics is characterized by the arrival of a third party: a relationship with all others⁴. The relationship with the other is a close, face-to-face relationship of responsibility that precedes any questioning. Politics has the important responsibility of questioning the existing order in the sense that inquiry should relate to the search for a just community. Politics concerns the development of ethics, although there is a temporality or chronology in the interrelationship between ethics and politics in the sense that one precedes or follows the other because the ethical relationship occurs in a political arena. The arrival of this third party on the scene causes the political sphere to be opened up or brought to bear. That is, this arrival (of the third person) defines the transition from ethics to politics in Levinas. At this point, the defining question, the question of justice itself, must be asked: "Who in this plurality is the other par excellence? How can I judge? How can others who are unique and incomparable be compared?"⁵ This journey is embodied by a transformation in the type of relationship in question: from the ethical relationship characterized by complete difference/asymmetry to the political relationship characterized by reciprocity/equality among the members of society. The relationship of infinite responsibility between you and me (*you / toi*) does not imply reciprocity because my responsibility before the other does not assume any correspondence (for Levinas, any correspondence or reciprocity excludes the generosity implied in the idea of responsibility and renders it instrumental or utilitarian). Here, the question of justice as a political problem arises, and from this issue, the question of law and politics arises:

My search for justice assumes a new relationship in which the excess of responsibility that I must have before the other is subordinate to the question of justice. In justice, there is comparison, and the other has no privilege in relation to me. Among the people who enter this relationship, another relationship that assumes a comparison among them must be established (i.e., it assumes justice and citizenship). The limitation of that initial responsibility is that justice still implies a subordination of the self in

³ Levinas states the following: "In relation to the other, he appears to me as someone to whom I owe something, to whom I am responsible. Hence, there is asymmetry in the *I/You* relationship, a relationship of complete difference between me and you, because the whole relationship with the other is a relationship of responsibility." Emmanuel Levinas. *Alterity and transcendence*. 1999, 101.

⁴ "But the apparent simplicity and complete asymmetry of this relationship between **me** and **you** are disturbed by the arrival of a third person who appears alongside the *other* on *his* side. This third party is also the neighbor, the face, an unattainable alterity. Here, with this third person, we have the closeness of all men." See Levinas (note 3). 101, emphasis added.

⁵ See Levinas (note 3). 102.

*relation to the other. With the arrival of the third person, the fundamental problem of justice becomes the problem of law, which is always of the other.*⁶

For Derrida, the appropriation of these views is also revealed as a political perception of justice in the sense that justice involves the idea of political change and openness to a future that can induce change. The idea of justice as the experience of what cannot be decided (undecidable⁷) is what renders the subject political (and legal), given the necessity of the decision. The moment of judgment encompasses the transition from the undecidable to the decision (i.e., the transition from an ethical experience of justice into political action). How can this judgment be performed, and what is the content of this political action? In Derrida, the answer is always found in the present or in some specific form of political action. Justice should be the guide or the critical element, but it can never be brought into the present. As an element of political action, justice is marked by the symmetry among parties at the point within the *polis* space in which they are all subjects or citizens. On this note, Derrida writes the following:

A deconstructive approach to politics based upon the radical separation of justice from law; and the non-instantiability of the former within the latter, leads to what one might call the disembodiment of justice, where no state, community or territory could be said to embody justice. One might say that the ‘experience’ of justice is that of an absolute alterity or transcendence that guides politics without being fully present in the public realm.⁸

Moreover, to view rights and struggles as being the same is to reaffirm pluralism and difference continually, to recognize the possibility of conflict and to view democracy as a way of organizing society instead of a mere form of government. The grammar of the democratic game requires knowledge of the constitutive rules of a community. Rules can only be read and learned from within the framework of a particular tradition, with the help of the concepts provided by this tradition. Likewise, what is legitimate and illegitimate or right and wrong will always be unique to this tradition (i.e., historically and socially contextualized within this tradition). These factors allow us to think of man as embedded in his own history, and it is only through that history that the world makes itself known. Only within specific traditions

⁶ See Levinas (note 3) 102.

⁷“Undecidable is the name of intractable dilemmas that occur in completely determined circumstances. However, undecidability refers not only to the fundamental *aporias* within a discourse but also to the requirement for a constitutive decision that articulates social meanings in one sense or the other.” Jacob Torfing, *New theories of discourse. Laclau, Mouffe and Zizek*. Oxford: Blackwell, 1999, 307.

⁸ See S. Critchley. Derrida: private ironist or public liberal?, in: *Deconstruction and pragmatism.*, 1996, 36.

can human rights be analyzed and defined. The definition and interpretation of what these rights will be is always part of a particular historical and social context. Therefore, human rights discourse must always be problematized in specific contexts. Although this work adopts the idea of non-universalist ethics, it also assumes that democracy is a privileged space for the achievement of these rights. Thus, this work seeks to interweave reflections on alterity and human rights with reflections on democracy.

As previously stated, within this perspective, justice and democracy are what might happen⁹. The disembodiment or depersonalization of justice can best be represented by democracy, as democracy also represents the disembodiment or depersonalization of power and the separation of the body of the principle from the state/sovereignty. In this sense, democracy is the political form that most appropriately represents this perspective on justice. This perspective assumes that political action occurs but is not confined to it. This perspective is not contained within the limits of the judicial system but assumes that the law is a stabilizing element that prioritizes the moment of decision (or rather, of judgment). In other words, the law is assumed to be an ethical commitment. This democracy can be signified by the endless search for justice and represented by a commitment to the other. This form represents the radicalization of democracy, which is understood as the deepening of democratic relations. This plural democracy can recognize the other in all of his fullness and can look beyond reason to grasp the importance of passion as the driving force of human actions.

To think of democracy, one must think about who its subjects are and how they are positioned in the so-called political community. The subject of liberal democracy in its current form is not the same as the subject of a radically democratic society.

The idea of citizenship is closely related to the idea of rights and obligations (i.e., the citizen is entitled to rights and has obligations in the political sphere). However, the idea of rights is much more privileged than that of obligations in liberal ideology. The liberal citizen is conceived in the abstract and almost in isolation from the political community of which he or she is a member. Within this perspective, the citizen is considered an individual holder of universal rights. The old notion of citizenship, which is founded on the ideal of political participation, stressed the obligations of individuals as active members of a political community and also emphasized the ancient notion of freedom. In contrast, the liberal citizen is related to the political community in the sense that the community, as a whole, should be able to protect its rights against the state and other individuals. In this perspective, citizenship

⁹ See Jacques Derrida, *Remarks on Deconstruction and Pragmatism*, (note8) 77-88.

acquires a passive connotation rather than an active one. The rights of individuals depend on the community, but this relationship is conceived from an instrumental view (i.e., the political community is the instrument used to achieve and protect individual rights). The rights of individuals are protected by law, which must be applied by the state. In liberal thought, there is no concern about the individual's participation in the development of civic virtues or the formation of community standards and values. In this view, what matters above all is the legal *status* of the individual rights holder.

Membership in the political community implies acceptance of a specific language of civic relations, which is the *res publica*. The common thread is a substantive notion of the public interest instead of the common good. In turn, this interest is defined and composed of the interrelationships among the various social actors. The public interest also depends on numerous factors that determine this mode of interrelationship and can thus only be considered and defined based on the specific conditions within a particular historical context. In other words, given the historical and concrete nature of the public interest, it can always be defined and redefined in a process of continuous reconstruction.

Citizenship can never be understood without also understanding that the relationships that exist within a public space are composed of political actions that are always exercised within an atmosphere of conflict and antagonism. In this perspective, the political always addresses the construction of a "we" as opposed to a "they." This dimension of antagonism, which is characteristic of the political, involves the establishment of a boundary that separates "us" from "them". Applied politically, this conflict implies the acceptance of others and of difference. The other does not share the same values or ideals as the self but shares the mutual recognition of everyone's right to hold vastly different expressions and positions. The demarcation of this border and its recognition also enable the construction of a common identity, which is generated in the we/they dialectic. By contrast, if the conflict cannot be managed in the sphere of political action, the conflict might lead the community to conceive the other as an enemy or as someone to be destroyed such that the identity of the community is not lost. This border is constructed because of adherence to ethical-political community principles, which lead to the exclusion of those who do not share them. The community is constitutive of the notion of citizenship. Identification with the "we" enables the individual to be recognized as a citizen.

Conflict, antagonism, division and incompleteness are not temporary obstacles to the realization of ultimate harmony in democratic societies. On the contrary, these elements are always present in any democracy because they are constitutive of the term's meaning, which

implies that agreements, principles, values and possible identifications are always provisional. The concept of citizenship is ultimately linked to the necessary ideas of freedom in the private sphere and equality in the public sphere. However, these two principles cannot be perfectly balanced against or reconciled with each other.

The impossibility of complete consensus or of a final agreement indicates the deepening of democracy instead of its negation. By improving the instruments of political participation and political decision making and by seeking ways to strengthen social bonds, communities strive for the unattainable: democracy. However, this striving gives democracy its meaning in the sense that democracy requires invention and constant reinvention and is an endlessly dynamic force. Politics exists because there is always a need for decision making. In turn, decisions need to be made because the *political* is marked by conflict and antagonism. Perfect and lasting stability would represent a denial not only of the political and of politics but also of democracy itself.

There are no precise, pre-established ways by which a community can obtain the balance between identification and the cohesion required for democracy or between empowerment of the individual and the respect for difference required by liberal pluralism. This balance will never be perfect or stable and will always be subject to new articulations. Because this balance can manifest itself in an infinite number of ways, it cannot be reduced to a final solution.

Ethics becomes politics. The responsibility demanded by the recognition of the other is infinite. The experience of alterity is impossible and can never be fully captured. Justice and democracy cannot be achieved in the present and will always remain something to be achieved. Nonetheless, even if justice only ever exists in the future and if politics, based on a deconstructionist reading, signifies a space for the undecidable, we cannot refuse to search for a way to resolve this impossibility, particularly for the achievement of human rights.

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