

POSTMODERNITY: DECADENCE OR RESISTANCE
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12. POSTMODERNITY AND ECOLOGY : INTEGRAL
THOUGHT AND LOCAL ACTION

As opposed to what occurs with non-violent, ecumenical and neo-feminist thought, we can fix the precise date of the apparition of the new mode of ecological thinking. Indeed, its first public manifestation of a universal nature took place during the United Nations Conference on the Environment held in Stockholm between 5-12 June, 1972.

The atmosphere that made the Stockholm Conference possible had been prepared by the awareness of the disasters brought about by the Atom Bombs dropped by the United States over Japan, as well as by growing environmental pollution due to the use or abuse of toxic products, especially in the Vietnam War but also for private uses (fertilizers, pesticides). Along with this came a greater awareness of the increasing seriousness of undernourishment in the world as alarming reports were published yearly by the Food and Agriculture Organization (FAO), which stressed the existing lack of proportionality in the sharing of the wealth of the Earth, as well as a greater awareness of the abuses of the countries of the Northern Hemisphere in the sphere of international trade.

What was being questioned was the credibility of the science of economics as such, since it was proving itself incapable of seriously tackling topics which were apparently only economic, such as that of the conservation of natural resources and their adequate distribution. In 1971 there appeared the fundamental work of Nicholas Georgescu-Roetgen, *La ley de la entropía y el proceso económico*¹, in which the thesis of the infinity of resources was denied. Some months earlier, concretely in March, the Meadows Report from M.I.T. on *The Limits to Growth*, elaborated for the Club of Rome², had come to this same conclusion of the insufficiency and inadequacy of the economy to confront the

¹ Nicholas GEORGESCU-ROETGEN, *Demain la décroissance*, French translation by Ivo Reins and Jacques Gribevald, Favre, Paris, 1979.

² MEADOWS REPORT, *Los límites del crecimiento*, Spanish translation by María Soledad de Grana, FCE, Mexico, 1982.

problems created by the technological revolution. The Club of Rome had been founded six years before by the Italian entrepreneur and humanist Aurelio Peccei with the aim of analyzing the problems of the day from an interdisciplinary perspective. The quoted Report made it clear that the secondary or derived problems created by the technological revolution, such as unemployment, contamination or arms proliferation, could not be solved technically, but rather only by means of "a change in human mentality"³. Along with this important stance against economicism, the Report presented questionable aspects related to its neo-Malthusianism, motivated by the belief that world population had grown beyond reasonable limits, whereas resources are not able to grow at this same rate. Peccei himself, in his 1977 book *Human Quality*⁴, declared that the Modern Age had eclipsed, in so far as it is the age of *homo oeconomicus*, and that there was need for the apparition of a "new humanism" based on ecology and solidarity. The neo-Malthusianism of the earlier reports tended to become reduced in the later reports to the Club of Rome, in favor of greater emphasis being placed on the distribution of resources.

The Stockholm Conference to which we have alluded drew up a Declaration on the Environment whose two first principles refer, respectively, to the right to a quality of living and to the need for conserving the resources of the Earth for future generations. In the declaration of motives it is stated that "millions of people are still living well under the minimum levels required for a dignified life by being deprived of adequate food, clothing, shelter, education, health and hygiene [in spite of the fact that] of all the things in the world, human beings are the most valuable. Humans are those who promote social progress, who create social wealth and who develop science and technology"⁵.

From this it followed that the modern approach to the economy was wrong in view of its omission of the following:

- 1) That the individual is the end of the economy in all its suppositions and furthermore the individual is the most valuable being in his or her extraordinary variety of cultures and personalities;

³ MEADOWS REPORT, *Los límites del crecimiento*, cit., page 189.

⁴ Aurelio PECCEI, *La calidad humana*, Spanish translation by Joaquín Antuño, Taurus, Madrid, 1977.

⁵ UNITED NATIONS DECLARATION ON THE ENVIRONMENT, Stockholm, 5-12 June, 1972. Conference 48, in *Textos normativos de Derecho Internacional Público*, compilation and notes by Nicola Torres Ugene, Crítica, Madrid, 1985, pages 455-460.

2) That resources are limited as a consequence of having forgotten the law of entropy, entailing their irrational wastage;

3) That resources tend towards concentration in agreement with the logic of vested interest as the supreme criterion, and this leads to the avoidance of their just distribution.

The author who best perceived the change of paradigm that had to become introduced in the science of economics starting from these principles, and who best reflected upon these, was the German-born and later British national as a consequence of his opposition to Nazism, Erich Fritz Schumacher (1911-1977), whose religious trajectory went from atheism to Buddhism and from there to Catholicism. His most famous book, *Small is Beautiful*, published the year after the Stockholm Conference, has a significant subtitle bearing on "the economy as though people were taken into account"⁶. Initially this book was not well interpreted; it did not have the aim of exalting smallness as such, but rather the right size. If smallness was stressed, it was as a counterpoint to the technocratic gigantism of both East and West. But later on, above all after the publication of his posthumous book *A Guide for the Perplexed* ⁷ in 1977, the influence of his thought became remarkable, especially in authors as decisive for the critique of the modern model of society such as the futurologist Hazel Henderson, authoress of an important book *The Politics of the Solar Age*, whose subtitle is also significant: *Alternatives to the Economy* ⁸, or the physicist and philosopher Frijhof Capra, especially in his book *The Crucial Point* ⁹.

What is most fascinating about Schumacher's contribution lies in the courage with which he confronts economists, who consider the extension of the market to be a panacea for all evils, whereas Schumacher stresses that the market itself is the source of the basic insufficiencies of Modernity: "The market only represents the surface of society and its meaning refers to a momentaneous situation, such as it exists here and now. There is no deep delving in the essence of things nor in the natural facts that lie behind them. In a

⁶ Fritz SCHUMACHER, *Lo pequeño es hermoso*, cit.

⁷ Fritz SCHUMACHER, *Guía para los perplejos*, Spanish translation by Guillermo Sanz-Calleja, Debate, Madrid, 1981. In 1977, after Schumacher's death, the Schumacher Society was founded; its official organ is the journal *Resurgence*.

⁸ Hazel HENDERSON, *La política de la Edad Solar. Alternativas a la economía*, cit., *passim*.

⁹ Frijhof CAPRA, *El punto crucial*, cit.

certain sense, the market is the institutionalization of individualism and of irresponsibility"¹⁰.

The greatest limitation of the market, according to Schumacher, lies in its eradication of the qualitative, and this provokes important consequences in the use of resources and in the comprehension of human affairs. "In the market, for practical reasons, there is the suppression of innumerable qualitative distinctions which are of vital importance for individuals and society and which are not allowed to come to the surface. Thus does the reign of quantity celebrate its triumph in the Market. There everything is made equal to the rest. To make things equal means to give them a price and to make them interchangeable. To such a point is modern thought based upon the market that what is sacred (the person) is eliminated from life because there can be nothing sacred in something that has a price"¹¹.

The primacy of the market therefore introduces a twofold and dangerous avoidance of differentiation. In the first place, between types of resources, singularly the existence between renewable and non-renewable resources, and second, between the costs of growth, since the Gross National Product does not take into account, as it should, energy losses, whether environmental (desertification, reduction of the ozone layer due to aerosols, the disappearance of non-renewable fossil fuels) or human (increased delinquency, cancer, famine ...)¹².

Against this, Schumacher proposes, on the one hand, the adoption of alternative or soft technologies that do not consume non-renewable resources. From this stems his special predilection for solar energy, which explains the title of the book by his disciple Hazel Henderson. On the other hand, intimately connected with this, there is the requirement of a way of coming closer to the world which is completely antagonistic vis-à-vis the consumption model, in which the dimension of the respecting care of things —animals, plants, land, energy— is given primacy, as is the primordial attention granted to the conservation of resources whilst thinking of our future generations. "The primordial concept of wisdom is permanence: we must study the economics of permanence. Nothing has economic meaning unless its long-term

¹⁰ Fritz SCHUMACHER, *Lo pequeño es hermoso*, cit., page 45.

¹¹ Fritz SCHUMACHER, *Lo pequeño es hermoso*, cit., page 46.

¹² In Spain, the two economists who manifest a greater ecological sensibility and a greater awareness of the crisis of the market are José Luis Sampedro and Ramón Tamames.

continuity can be projected without falling in absurdities"¹³. The requirement of caring for nature and for the conservation of resources therefore lead to the recuperation of sobriety, which according to Schumacher is "the most necessary of the cardinal virtues at this moment: the possibility of mitigating the exhaustion of resources and of attaining harmony in the relationships between those who own wealth and power and those who do not is nonexistent as long as there does not exist, in some place, the idea that sufficient is good and more than sufficient is bad"¹⁴.

The requirement of sobriety as the central message of ecological thought entails, in our opinion, very profound implications of a practical nature, as well as a manner of considering human beings which leads us to wholly overcoming the modern conception in its individualistic and voluntarist aspects.

As far as practical problems are concerned, there is an increasing number of studies that consider that the spread of unemployment in the world is jointly due to technological development and to the lack of solidarity. For this reason they propose the reduction of the working day as the sole remedy against unemployment. It is therefore a matter of inverting the basic tendency of the modern *homo oeconomicus* by radically denying that the distribution of resources can reach everybody by solely following the "laws of the market". An effort in solidarity is required in order to be able to distribute the hours of the working day so that we can attain, at the same time, the unification of humans, now split between being either producers or salespersons.

This is precisely the deepest message of the ecological mode of thinking: the recuperation of man's lost unity with other men, with nature, with oneself and with God. This is what we will presently deal with.

The awareness of the existence of non-renewable resources must lead us to the awareness of the inalienable, of what cannot be sold, of what cannot be disposed of. "The resources of the Earth can not be expropriated by any generation under any pretext. Earth, water, air, all that grows in the seas and in the soil and all that is found on the surface of the planet is a common patrimony of all peoples and of all

¹³ Fritz SCHUMACHER, *Lo pequeño es hermoso*, cit., page 33. On the topic of time in genuine postmodernity, see Jacques-Jean AUSTRUY, "Temps et développement", in VARIOUS AUTHORS, *Le droit et le futur*, Presses Universitaires de France, Paris, 1985, page 111 and following.

¹⁴ Fritz SCHUMACHER, *Lo pequeño es hermoso*, cit., page 307.

generations", writes Erwin Laszlo in his book for the Club of Rome, *The Last Chance* ¹⁵.

The ultimate foundation of the ecological approach is its opposition to the voluntarism that becomes concretized in Cartesian dualism: in the opposition between the individual will as a subject and the rest of reality reduced to being a mere object capable of being manipulated at the mercy of that will and therefore entirely alienable.

Postmodernity in its ecological slant stresses the limits of trade and therefore also the capacity to dispose of things. What people had thought during Modernity to *belong* to them (water, air, ozone, or —at another level— our own bodies) is contemplated by ecological thinking to be a part of our *being*, and therefore all this cannot be disposed of. The legal repercussions of this approach will be analyzed in the following chapter.

It is true that here also (the same as with non-violence, ecumenism and neo-feminism) not all the possible coherent conclusions have been reached by the authors dealing with this subject. The same as with the biologicistic shortcomings of certain forms of pacifism or the individualistic and relativistic shortcomings of certain forms of feminism, sobriety has at times been considered as a requirement only with regard to relationships with nature but not with regard to others and to oneself. This is what occurs with certain forms of ecologism which are unable to entirely break away from voluntarism and which absurdly defend the inalienable rights of natural resources, but not those of human life, by defending abortion. The grandeur of Schumacher and his followers lies in not having fallen into such contradictions. The recuperation of the inalienable leads to the recuperation of the sacred and of the religious. "The term "return to the home" naturally has a religious connotation, because it requires a great dose of courage to say "no" to the fashions and fascinations of the epoch and to question the principles of a civilization which seems destined to dominate the world"¹⁶. In an analogical manner, Skolimowski, in his book *Ecophilosophy* ¹⁷, manifests the same thing by underlining that the foundation of ecological philosophy is man's non-repeatable and sacred nature. Schumacher places a condition to the clarity in the perception of goals in the postmodern era with this warning:

¹⁵ Erwin LASZLO, *La última oportunidad*, Spanish translation by Iris Menéndez, Debate, Madrid, 1985, page 161.

¹⁶ Fritz SCHUMACHER, *Lo pequeño es hermoso*, cit., page 163.

¹⁷ Henryck SKOLIMOWSKI, "Reexaminando el movimiento ecologista", in VARIOUS AUTHORS, *Ecofilosofías*, Cuadernos de Integral, Barcelona, 1984, page 55 and following.

"The modern experience of living without religion has been a failure and once we have understood this we will know what our postmodern goals will be"¹⁸.

¹⁸ Fritz SCHUMACHER, *Guía para los perplejos*, cit., page 198. See also Jonathan PORRIT, "Let the Green Spirit Live", Schumacher Lecture in *Resurgence*, no. 127 (March-April 1988), pages 5-12, and José PÉREZ ADÁN, *Revista de Trabajo*, (1988), page 135 and following.

13. HUMAN RIGHTS AS INALIENABLE RIGHTS

Voluntarism and economicism, as dominant features of the modernizing mentality, started off from the unconditional acceptance of the principle *volenti non fit injuria*, and therefore from the impossibility of the existence of attempts or violence against oneself.

This anthropological near-sightedness downgraded the meaning of the word "inalienable" used in some declarations of rights, which was understood in the weak sense of "inviolable" vis-à-vis others, but capable of being renounced by the subject himself. This was especially clear in texts such as the Declaration of the Good People of Virginia, in which property is considered to be inalienable, along with life and liberty. In effect, property in the modern sense is, as we have seen, what is alienable and disposable above all things. When we speak of the inalienability of property, the only thing that is meant is that its free use and disposition on the part of others should not be tampered with.

The United States Declaration of Independence, Jefferson's doing, to this respect constitutes a novelty of extraordinary interest since the replacement of "property" by "the pursuit of happiness" allows us to understand the word "inalienable" in its strong and rigorous sense. In effect, the renunciation of happiness seems much more antinatural and absurd than the disposition of property.

The inalienable nature of rights is precisely the specific note of postmodern thinking, intimately derived from the paradigm of the "quality of life". Indeed, now it is not so much a matter of defending rights in the face of the State, as in the case of the "freedom of the moderns" or the rights of the first generation, but rather of defending them in the face of the market and even in the face of the very individual will of the subjects of those same rights.

The inalienable was hinted at in the Roman conception of law when it referred to *res extracommercium*, among which there was the inclusion of *res communes* and of *res sacrae*. This intuition proves that the modern mentality is much more strongly economicist and mercantile, as compared to the Roman mentality, which in spite of everything maintained a sense of limits to avoid *hybris*.

The admission of inalienable rights, even previous to the market and on the part of their very title-bearer, implies a

conception of the person different from the liberal conception of an isolated and self-sufficient monad, and from the late modernist conception of a "playful mask". It forces the understanding of the human person in agreement with its originating terminology as *prosopon*, as a being open to reality, as relationship with the Origin, with others, with nature.

The relational dimension of the human individual—incompatible with methodological individualism, the supreme ideology of today—leads precisely to the overcoming of homunculum. Man stops considering himself as "something insignificant", pure unsatisfied desire, from the moment in which he opens up to others, from the moment in which he experiments the fact that he is not sovereign but rather the guardian and custodian of reality for his contemporaries and for the future generations. This idea of the connection between the inalienability and the grandeur of human beings is what Kafka eloquently manifests in his conversations with Janouch: "We live as if we were the sole masters. This converts us into slaves"¹.

This conception of the person based on solidarity is understood by the majority of primitive peoples, which today we pejoratively call "Third—worlders", who are aware of the fact that the guarantee of the right to life, clothing and shelter forces the common property of the land or at least it excludes its unlimited disposition. This is what occurs, for example, in the mentality of Africans, as Leopold Sedar Senghor reminds us: "In black Africa there does not exist the right to possession. There only exists the right to usage, usufructuary property. The eminent dominion of the earth does not correspond to man. Land is inalienable because one can not estrange that which does not belong to him. Each person can thus satisfy his or her needs of food, clothing and shelter, *sine qua non* conditions of any type of spiritual development"². The same can be said of other peoples in which chrematistic modernization does not dominate, in which there is the tendency to stress the connection between rights and duties and to underline the dependence of law with respect to the satisfaction of fundamental needs³.

¹ Gustavo JANOUCH, *Conversaciones con Kafka*, Fontanella, Barcelona, 1961.

² Leopold SEDAR SENGHOR: *Libertad, negritud, humanismo*, Spanish translation by Julián Marcos, Tecnos, Madrid, 1970.

³ VARIOUS AUTHORS, *Los fundamentos filosóficos de los derechos humanos*, cit. See also Prakash SINHA, "Human Rights: A Non-Western Viewpoint", in *A. R. S. P.* (1981), pages 76-91.

In the Western World, this strong sense of the inalienable in relation to the usage of resources, which are common, was understood by classical thought which reduced the right to property to a "power of administration and distribution" which was reiterated by authors such as Samuel Taylor Coleridge (1772-1834), for whom "the life, health and well-being of workers are inalienable"⁴. This led him to limit *laissez-faire* and private property in favor of the most deprived.

This inalienable character of human rights is what is to be found beneath the apparition of the term —not too fortunate as such, although opportune in its applications— "moral rights", which is found, as is well known, in the work of Coleridge's disciple, John Stuart Mill. In effect, this notion requires the granting of primacy to the connection of rights and duties over and beyond individualism, and it stresses the sense of solidarity. In the fifth chapter of his book *Utilitarianism*⁵, Mill stresses that "the equal right of all to happiness" —a clear Jeffersonian reference— implies the equal right of everyone to the means that lead to happiness. Hence:

1) The right to equal treatment.

2) The right to life as a basic right: "To save a life it is not only licit, but rather it is a duty, to steal or to take by force the food or medicine needed, or to kidnap the only qualified doctor and to force him to intervene".

In spite of his liberalism, Mill —possibly due to Coleridge's influence— well kept in mind the limits of the autonomy of the will in favor of the least favored. He ends his *Principles of Political Economy*⁶ in the following manner: "Regarding all that which is desirable for the general interest of humanity and of the future generations, it is very convenient that the Government should take care to stimulate it and to remunerate it". Moreover, in chapter 4 of Mill's *On Liberty*⁷, he points out that "gambling, drunkenness, incontinence, sloth and filth should be repressed by the law

⁴ Coleridge's sense of property is the one that later on appears in another genuine postmodern, Gilbert Keith CHESTERTON, who writes with his usual sharpness: "I defend the private property of those who haven't got any", *Autobiografía*, Spanish translation by Antonio Marichalar, in *Obras completas*, Plaza, Barcelona, 2nd edition, 1961, tome I, page 176.

⁵ John Stuart MILL, *Utilitarismo*, Spanish translation by Esperanza Guisán, Alianza Editorial, Madrid, 1984, chapter 5, page 132.

⁶ John Stuart MILL, *Principios de Economía Política*, edition by W. J. Ashley, FCE, Mexico, 1943, page 835.

⁷ John Stuart MILL, *Sobre la libertad*, Spanish translation by Pablo de Azcárate, Alianza Editorial, Madrid, 1986, page 160 and page 184.

and by the police". Although he does not come to grasp that there exist rights with oneself, we cannot think that Mill would have accepted the existence of violence against oneself in the light of the excessive competition of today, of stress, the increase in suicides, the spread of drugs, the wastage of resources and growing desertification, and so on.

The awareness of the inalienable nature of the right to the fundamental resources of the Earth is to be found at the base of agricultural collectivism as defended by Henry George in his significantly entitled book, *Progress and Poverty*⁸, written in 1877. George tries to grant efficiency to the Declaration of Independence regarding the topic of the right to happiness, the same as Mill, but through more radical means. He affirms that "when the equality of the right to land is denied, with the increase of population and the development of technical inventions, political equality simply becomes the freedom to find work with starvation wages". Henry George's thesis on the inalienable nature of the resources of the Earth also inspired, in our own country, the work of Joaquín Costa, who underlined the connection between agricultural collectivism and the thesis of patristics. He rightfully declares: "All men, for the mere fact of being born, bring into life a natural and inalienable right: that of using the land with benefit, the same as breathing the air. To deprive them of this is to rob them"⁹.

The limits to the disposability of resources in favor of their conservation for future generations can be seen as the origin of the so-called human rights of solidarity or of the third generation. Against what is sometimes believed, we do not think that its enunciation and defense constitutes a superfluous task; on the contrary, such rights arise to overcome the false disjunctive—which we referred to in our chapter on political Modernization— between freedom and equality, trying to see to the conditions that permit the remaining rights. They therefore possess a much more originating and radical nature than some of the so-called rights of the first generation (the freedom of the moderns) or of the second generation (the rights of equality and promotion). In this sense, the rights of the third generation perfectly fit in with the new paradigm of the "quality of life",

⁸ Henry GEORGE, *Progreso y miseria. Investigación sobre la causa de las crisis industriales y del aumento de la pobreza con el incremento de la riqueza*, Spanish translation, Mancer, Barcelona, no date available, tome II, pages 38 and 234.

⁹ Joaquín COSTA, *Oligarquía y caciquismo*, edition by Rafael Pérez de la Dehesa, Alianza Editorial, Madrid, 1967, page 51 and page 199.

proper of genuine postmodernity. As Diego Uribe Vargas¹⁰ recalls, this set of rights had not been the object of international declarations, as opposed to what had happened to the two first sets in 1966, but they have been analyzed in the Hammer Conferences since 1978 in collaboration with the *Fondation Internationale des Droits de L'homme*.

What is now central is no longer the struggle against the repression of the State, nor even solely against the exploitation of the market, but rather the fight against the alienation of the individual. The inalienable constitutes the nerve center to be protected. Unity between rights and duties and the critique of voluntarism appear in the forefront when it is a matter of defending:

- a) The right to a clean environment.
- b) The right to respect towards the common patrimony of humanity.
- c) The right to development.
- d) The right to peace.

Peace and ecology are impossible to be conceived from the centrally dominating position, from the primacy of the power of disposition. Neither can be considered in any manner whatsoever as subjective rights, but rather they have to be considered as moral rights, as rights-duties. What has priority is responsible usage, and not unlimited availability.

The ambit of inalienable rights is therefore the ambit of *res communes*, of commonly held goods, of goods that everybody has the right to use, but nobody has the right to abuse. It is therefore the ambit of resources, which is directly linked, as we have seen, to the ecological dimension, introducing an important nuance in the understanding of rights.

The other sphere in which we can see the requirement of the recognition of inalienable rights in the strong sense of the term is in the field of the "rights of personality", which in the Roman terminology earlier quoted could correspond to *res sacrae*, although in that case the expression had a more

¹⁰ Diego URIBE VARGAS, *La troisième generation des droits de l'homme*, Recueil des Cours de l'Academie du Droit International, The Hague, 1984. In fraternity as the joint realization of freedom and equality, see Jean LACROIX, *Crisis de la democracia. Crisis de la Civilización*, quoted by Ernesto VIDAL, "Fundamentos de la democracia en J. Lacroix", in *Homenaje a Sylvia Romeu*, cit., pages 1021-1031.

limited meaning. Here we newly come across the need to limit the power of patrimony and of the market and to use a legal technique different from that of subjective rights, in so far as in the latter case, as we have seen, what is essential is their capacity for being at the free disposition of the subject, and now we are dealing with something that cannot be alienated.

Perhaps one of the first authors to point to the awareness of the importance of this type of rights within the crisis of modernity was Otto von Gierke (1841-1921) in his 1899 speech on "The Social Function of Private Law". His words, in spite of the time elapsed since then, still seem quite apropos today, as we advance towards the "economic analysis of law": "There is no error as dangerous as the widespread idea that the mission of private law is limited to patrimonial law. Patrimony only exists in function of the person, and above and beyond all legal-patrimonial relationship there is the *right to personality* [...]. The most elevated rights of personality, the right to life, to physical integrity, to freedom, to honor, are today generally expressed only timidly and not without a dose of fiction, and they are imperfectly protected"¹¹.

Postmodern thinking requires, along with the overcoming of patrimonialism, the overcoming of voluntarism, which is nothing else but its inseparable other side of the coin. Indeed, by no longer basing law on the will and on the capacity of disposition, children and the handicapped will be able to gain access to rights. This was the great discovery of the German jurist Rudolph von Jhering (1819-1892), which has been delved upon by the main present-day defenders of "moral rights" in the English-speaking world, among whom Neil McCormick¹² stands out. All human beings without exception therefore possess inalienable rights in the strong sense, with claims that can be exercised juridically although they do not yet have a will or else have lost it.

The lack of connection between human rights and subjective rights or the power of disposition not only has the merit of the possibility of the universal extension of the subject of rights, as opposed to the thesis of Modernity (from

¹¹ Otto VON GIERKE, *La función social del derecho privado*, speech delivered on April 5, 1899 to the Viennese Association of Jurisconsults, Spanish translation by Apalategui, Madrid, 1904, page 47.

¹² Neil M. MCCORMICK, "Los derechos de los niños", Spanish translation by Mercedes Carreras and Antonio Luis Martínez Pujalde, in *A. F. D.* (1988), pages 293-306. On the trajectory of the apparition of moral rights in the English-speaking tradition, see José María ROJO, *Anuario de Derechos Humanos*, Madrid, 1988.

Kant to Windscheid), but rather also it avoids the contradictions concerning the availability of the body and the licit or non-licit nature of suicide, of which we spoke when dealing with late modernism. In the new mode of thinking, the exclusion of voluntarism is united to the overcoming of the anthropological dualism between *res extensa* and *res cogitans*. The body is not a tool or just another commodity that can be disposed of; it is not something that I *have*, but rather something that I *am*, as Gabriel Marcel, among others, conscientiously pointed out throughout his work, especially in his book *Etre et avoir*¹³. From this it follows that we can not speak of rights over my own body in the sense of free disposition, but rather as a right-duty to its diligent and responsible use and care.

From the integral view of man as also being his own body it naturally follows that the death penalty and torture, which historically have been presented as being licit through the appeal to the anthropological irrelevance of the body, are monstrosities, but so are euthanasia and suicide, and much more so abortion, since in this latter case the body that is gotten rid of is not even the mother's but her own child's. Deep down, the problem of abortion is intimately linked to artificial paternity. In both cases, although in a distinct manner, it is thought that paternity is a subjective right, something which we can dispose of positively or negatively to our own liking. However, it is on the contrary a moral right, an obligation to the opening up to life which excludes frivolity or caprice. More repugnant still is the introduction in these matters of elements of a lucrative nature. As Touvenin¹⁴ has written, "The human body is not a thing. The individual does not possess his or her own body as an alienable, relinquishable and divisible good susceptible of becoming the object of commercial transactions (the sale of sperm, ovules, organs ...)".

The non-renounceable nature of rights not only corresponds to basic human needs, which forces the conservation of non-renewable resources, or to the non-disposition of life and the body, but rather it also refers to political freedom.

¹³ Gabriel MARCEL, *Etre et avoir*, Aubier, Paris, 1935. On Marcel, see the work by Encarnación FERNÁNDEZ in *Homenaje a Sylvia Romeu*, cit., pages 333-344.

¹⁴ D. TOUVENIN, "La disponibilité du corps humain: corps sujet ou corps objet?", *Actes Les Cahiers d'Action Juridique*, nos. 49-50 (1985). In this same vein, see the collective reader edited by Francesco D'AGOSTINO, *Diritto e corporeità, Prospettive filosofiche e profili iuridiche della disponibilità del corpo umano*, Yoca, Milan, 1984.

It is significant that within political sociology, in which for the first time the expression "postmodern" is used to define present-day society, it should be affirmed that political participation is the only way out of the crisis of the present day: "The active society —writes Amitai Etzioni in 1968, in a book bearing this same title— has on its mantelpiece the following Greek saying: an idiot is a man entirely dedicated to his own private affairs"¹⁵.

Deep down, the passage from subjective rights to inalienable rights within the legal framework has its correlated movement in the passage from economics to politics which is proposed in our day by authors such as Hirschmann¹⁶, Henderson, MacPherson or Elías Díaz. If methodological individualism is to be rejected in the juridical sphere due to its being unilateral and reducing, then it must also be rejected in politics.

In MacPherson, both requirements are jointly presented. In his 1973 book, *Democratic Theory*¹⁷, he considers, following in Jefferson's footsteps, that "participatory democracy" —which he correctly presents as being post-liberal and not mercantile— must be based on two basic conditions:

- a) The inalienable nature of the common property of fundamental resources, which would reduce economic disparities and with this oligopolies and partitocracies.
- b) A change of mentality in people away from consumerism towards that of persons who exercise their own capacities, since —as he himself states— "to consume is an individualistic act, whereas to develop one's own capacities requires a relationship with others, a sense of community".

¹⁵ Amitai ETZIONI, *La sociedad activa*, Spanish translation by Eloy Fuente Herrero, Aguilar, Madrid, 1980, page 11. The priority in the usage of the term "postmodernity" in political sociology has been stressed by Michel KOHLER in his article "Postmodernismus", cit. in *Amerika Studien*, page 12.

¹⁶ Hirschmann is perhaps the present-day economist who has shown the greatest vigor and valor in his opposition to the pretensions of his colleagues of reducing the world to the *mos oeconomicus*, while defending, on the contrary, the submission of economics to politics. Among his important works we can mention *De la economía a la política y más allá*, Spanish translation by Eduardo Suárez, FCE, Mexico, 1984.

¹⁷ Crawford B. MACPHERSON, *Democratic Theory. Essays in Retrieval*, Oxford, 1973. On his part, Elías DÍAZ underlines the possibility of overcoming capitalism through democracy: "The ethics of legitimation can —in my opinion— end up by decisively transforming the capitalistic logic of accumulation", ("La justificación de la democracia, *Sistema*, no. 65 [1985], page 22).

The reappraisal of politics supposes overcoming the privatizing economicism of technocratic Modernization. As Hans Jonas has pointed out in his controversial book *Das Prinzip Verantwortung*¹⁸, "the scope of human power has today become so great that it is necessary to be aware of the global consequences accumulated by human action, within responsibility for nature in its whole. It is from here that it turns out that Goethe's principle,

"Mind that your own affairs are well done, and
all other things will turn out all right",

still belongs to the hegemony of liberalism and is no longer correct".

It is not a matter, with this, of taking importance away from private action, but rather —as we have said when speaking of non-violence and neo-feminism— of establishing a continuum between both spheres, of transposing the modes of privacy to the public ambit: the importance of caring, of listening, as opposed to just seeing and counting¹⁹. Attention granted to the quality of life requires the maintenance of good manners in both the private sphere and the public ambit, so that the former does not degenerate into a mere gutter and the latter does not become reduced to simple hypocrisy, pure appearances²⁰. For this it is especially necessary to put an end to indifference, which —as Simmel and Benjamin²¹ had grasped— is a consequence of granting primacy to seeing over and above hearing, of speaking instead of listening: "The person who is capable of seeing but is incapable of hearing is much more indifferent than the person who is able to hear but who is not able to see. This is something characteristic of the big city". From this stems the opportunity of the ecological motto, "local action", since in this dimension it is easier to control the effects produced by political actions and to fight against indifference. This local action linked to integral thought explains Hölderin's profound sentence: "He who

¹⁸ Hans JONAS, *Das Prinzip Verantwortung*, cit.

¹⁹ On the importance of care, see, among others, Gilligan, Elsthain, Jankelovich, quoted by Helen BÉJAR, *El ámbito de lo privado*, Alianza Editorial, Madrid, 1988.

²⁰ On both these dangers —from his peculiar perspective— see Erwin GOFFMANN, *La presentación de la persona en la vida cotidiana*, cit., pages 33 and 118. On the history of good manners, see Norbert ELÍAS, *Proceso de la civilización*, FCE, Mexico, 1988.

²¹ Quoted by David FRISBY, "Georg Simmel, primer sociólogo de la Modernidad", in *Modernidad y Postmodernidad*, edition by Josep Picó, cit., page 65.

thinks of the deepest things, loves that which is more fully lived"²².

The new appraisal of politics also means the overcoming of elitism, so dear to technocrats, and which the post-structuralists strengthened by considering politics as a pure spectacle for the masses based on cheating and manipulation, whereas the conscious minorities had to solely enjoy art. Against this elitism which fosters depolitization and the return of Fascisms of different kinds, the new postmodern paradigm demands the replacement of the false disjunctive between art (elite, governing minority) and politics (the masses, the manipulated majority) by a transparent art that is committed with justice and with popular promotion, as poets such as Walt Whitman²³, Antonio Machado or Federico García Lorca pointed out in their day.

The growing concern for politics by means of public transparency and control could lead to safeguarding, at the same time, equality in the access to politics and the possibility of dissent, the Jeffersonian dream that has to a large degree yet to be experienced at the present moment. This will require, on the part of everybody, especially on the part of the most favored, the abandonment of the unique design from the *Belvedere* of power, and greater attention given to the "cries of silence" of those who are not able to speak because in some way or another they are not being allowed to live.

²² On the overcoming of the great division between minorities-masses, see Andreas HUYSEN, *After the Great Divide: Modernism, Mass Culture, Postmodernism*, Indiana University Press, 1987.

²³ From Walt Whitman, see *Hojas de hierba*, Spanish translation by Jorge Luis Borges, Lumen, Barcelona, 1972, page 84. On the political significance of Whitman, see Carl J. FRIEDRICH, *La democracia como forma política*, cit., page 165 footnote.