

SOME ELEMENTS OF THE THEORY OF THE RELATIONAL IDENTITY CRITERIA*

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Motto: "Omnes populi Roman iqui
legibus et moribus reguntur,
partim suo proprio, partim com-
muni hominum jure utuntur"*

I argue the theory I name "The Theory of the Identity Relational Criteria" and I propose some means of diminishing violence issued from macro and micro-juristic conflicts. This theory could be the basis for a new socio-normative structure which could provide much more freedom in choosing identity criteria and increase the means of putting an end to so called natural, ethnical, domestical, professional and religious conflicts.

The *noetic* right that I claim could better protect, by virtue of formal equality of all individuals, people's aspiration for general social fellowship within the value-criterion which I name "Unconditional Love". This fellowship could be rediscovered beside other values, juridically integrated since the Classic Roman Law: the autonomy of will and the good faith.

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Sometime ago, a German ruler imposed a resident to give him a certain property. The poor person categorically refused. "Are not you afraid of my power?" – asked the ruler. "There should be a judge for myself in this town, Your Highness..." promptly answered the subject.

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** Gaius, *Elementorum sive Institutionum*, Liber primus, Titulus primus (palimpsest, Codex Veronensis, Bibliotheca capitularis -- Medicea Laurenziana, XIII; XV): All nations that are governed by rules and mores are enjoying their law, and a natural *jus gentium*.

It's justice turn again. It has been spoken much, during this century, about power, on one side and about emancipation, on the other one; about "superior" civilisations and about pseudo-civilising vanity; about the terror of oligarchic and teratological, such as the Hobbesian or communitarian Leviathan, or about unconditional love, as a possible prophylaxis of evil etc. Justice has been rarely invoked as another possible understanding of a communitarian loose and confused destiny, which was caught in hatred lasso towards distortion, in exacerbated narcissistic egotism, or in egotistic and bovaric spirit.

It has not been spoken but only accidentally about social justice. The syntagm which, once, represented the florion of social thinking, was compromised in shady and excessive passages of homogenous totalitarisms and *de facto* equalitarianism, political-juridical phenomena, which managed, among other experiences, to shatter the cohesion, social organic solidarity, but also, the appreciation due to the distinct value, to the individuality naturally linked to the whole texture of human family. Nowadays, specially, there are the monarchs who tell us about all these ideals apparently abandoned.

The juridical conflictuality is not completely detached of the pletorical polyvalent and protean sphere of general human conflictuality but only by obvious purposeful incidence of the juridical norms in the settling of the epiphenomena usually named solicitor causes or litigant terms (*lites*).

The conflicts among individuals, fundamental privilege of the jurisdictions within the societies restricted to the civilisations configured on juridical paradigms, are apparently social relations which belong to the law micro-sociology. The archetype of a "case" conflict can be found, *de facto*, in the hidden strata of social memory.

It has been pursued, as mental extraction, as ideate pattern (*forma mentis*) the same primordial dichotomy: the paradisiac field of harmony and social happiness, separated from the unwholesome, horrible, pestilent area governed by a "Tanathos" of an infernal co-inhabitation, which is the conflictual area (the last one understood or not understood, as eccentricity, by definition irrational.)

The positivist-juridical theories have contributed to this pattern augmentation, simply mythological, but also mistificant in conflictology comprehension and due to a dull restrictive spirit, overestimating the role of "law", "normativity", "repression" in stopping the conflictual phenomena, either to macrosocial level, or to the relations among particular individuals (physical or juridical persons).

Starting from the above mentioned findings of common sense and the predictable exigencies of the new informational era towards the new humanity (seen as a sum with infinite cultural valences and spread in an infinity of value individualities), exigencies which are not used only in the informational or postinfomational era, I consider that the assembly (both eclectics) of the juridical or normative representations and theories should be reconsidered and, possibly,

reformed, in order to be adapted to a permissive, generous, relational antropocentrism. If the humanity of classical Roman epoch found the necessary intellectual resources for the juridical integration of certain philosophical values by excellence, as well as the freedom or the willpower autonomy (*voluntas*), equity (*aequitas*) and good will (*bona - fides*), I think it is the high time to conceive and integrate juridical the supreme value regarding the human solidarity -- **UNCONDITIONED LOVE** -- and not only in the limited constraints of family relations (which, in fact, also in the classical Romanity found the famous expression *officium pietatis erga proximas*), but by extrapolation, to the whole human family. Should I also insist that “unconditioned love” should become a fundamental idea in the social law so that the birth of an individual could not open the traps of the social risks, the first of them being pauperity??? The society will become again, at its turn, protective and comprehensive, before showing itself punitive and apprehensive.

Which could be the fundamental co-ordinates of a new humanism or juridical anthropocentrism?

The essential premise, from which we should start in approaching the conflictual phenomenon, is the human and social nature recognition as being, by excellence, conflictual natures.

The constatation *ex abrupto* of the conflictual character of human actions (therefore, on praxiological level) is not necessary unique and does not aim at exacerbated, eccentric forms, which are obvious in the quasi-totality of violence acts. The whole complex of factors that converge to the realisation of a human *genus* (*typus*) should be held in view for the more pertinent analysis of an individual and social responsibility when a violent expression generated by a conflictual report appears.

A new finding from which we can start in the conflictual reports evaluation and of violent expression is that of exacerbation, in post-modernism, of identity crisis on individual but also social scale.

Another expression of identity crisis is the tendency of human groups configured around certain ethnical, professional, occupational criteria in general, or after physical qualities offered by sex, age, race etc., to solicit to legislative bodies the elaboration and the adoption of special protective norms. Either they are considered “privileges”, or simple “protective” or “security” norms, these juridical norms will determine the appearance of a new and pernicious type of corporatism, will emphasise upon the divisions, the fractal states of society and they will prevent the free transgression of juridical status by individuals who are motivated and eager to assimilate and assume different identity criteria on a destiny or ontogenetic level.

The theory that we call of “relational identity criteria” starts from the fundamental premises of formal equality (*ex lege*) among all the individuals. Formal equality (*de jure*), at its turn, has its basis on relational

anthropocentrism principle, in conventional spatio-temporal and axiological frames. In such a frame, each individual is recognised, a priori, the quality of “universe centre” (in an infinite universe, from a Pascalian ontic perspective, our axiom is thoroughly acceptable). Each individual is the universe centre.

Thus, the blood law (*jus sanguinis* -- fundamental criteria in ethnocentrism--) and territorial law (*jus soli* -- fundamental criteria for territorialists--) will evolve towards the affirmation of a new cultural juridical model (*noosphere law* -- a new “blend” of the time, man becoming, more and more, a noesical human being--).

The law with a cultural vocation brings in the human reports' area an advantage of efficiency in the settling of social and individual conflicts by the fact it eliminates the natural pre-existent sources of certain conflicts (ethnics, autochthonism, migrationism, chaste spirit, corporatist or guild protectionism etc.).

This law model of *noosphere* supposes, among others, the non-restricted access to information and instruction and the affirmation of a new kind of education and knowledge: education opens to adjustment and comparative knowledge. In this way, the juridical acculturation phenomenon will get new dimensions, which will facilitate the juridical integration of societies that share the same kinds of political, juridical, economical, cultural or quasi-similar or similar spiritual values.

The same paradigm, fundamented on the theory of relational identity criteria, requires the permanent affirmation of those 5 kinds of liberties that sketched, the communitary European construction: the right of free circulation of persons and ideas, the right of free circulation of goods, services and money.

It is also benefit, from the same perspective, the circumstantial reevaluation of ideas and marks with deep negative connotations and which, due to the artificial, fortuitous generalisations lead to distorted and vindictive social representations for the profilaxation of specific violencies.

The anathematization or collective stigmatization (in fact, neo-tribal) burden emotionally the latent conflictual predispositions of the representative on identity criteria and lead to the reformation (*forma mentis*) of the initial reparatory route circumscribed to the private revenge spiral. The collective incrimination and re-incrimination are, from a juridical psycho-sociology perspective, in teleological relations with the psychic complex which we could call “*frustration-identity-power*” and indirectly, it favours the thesis (of Hegelian and Nietzschean extraction) “the collective laws and responsibilities”.

The theory of relational identity criteria, a theory on which the model of *noesical law* or *noosphere law* is structured, brings a higher degree of permisivity and a relativization of the oppressing effect of punity fact (punity). The settling of punity on new cultural and informational grounds (where the

philosophy, the sociology of law and the fundamental human liberties have an important place), is, an imperative from an objective perspective in Time dimension, the informational time factor or “*noetical time*”. Consequently, *exempli gratia*, if, from a spiritual, cultural, informational perspective, a punishment consisting in freedom privation on a temporal-conventional snapshot for a year (just as a supposition), the applied punishments, at the beginning of this century, had at that time a frustrating value (let’s concede it) $n \times 1$, well, from the same perspective, the informational-cultural-temporal frustration value, *mutatis mutandis* in our contemporaneity, a value induced by the same punishment (that is, in the same temporal-conventional quantum) could be $n \times 10 \times 20$...

To transform the punishment from a reeducation factor into an ordinary instrument of social *vendetta*, cannot constitutes a favourable way of reequilibration of juridical conflictuality (even a violent one). The excessive incrimination and punity represent, on the contrary, cryptic signs of scepticism, nihilism, and sometimes, of cynicism, all of them being state facts.

In fact, the exacerbated or violent conflicts are themselves measures for the resentmental and frustrating liberation, due to a voluntarism stemmed in many interdictions. This does not represent, *ipso facto*, a libertine perspective, but also a reconsideration of the substantial and relational report: *ego-alterus sive ego-mundus*. Equilibrium rebuilding between the inside human universe (infinite through valences) and the universe of social deterioration (infinite through relations), among other measures, could, through the mentioned ways, attenuate the virulence of inter-human conflicts at a micro or macro-social scale.

The model we proposed, centred on the theory we called “*of relational identity criteria*” and which places anthropocentrism juridical punished on the basis of any normative-social construction have the mission to diminish into a reduced ideality, therefore in different forms of social pacification.

The reconsideration of certain substantial factors within the inter-personal and inter-group relations, as well as, time, knowledge, the approach of axiological criteria and juridical values, regarding the amelioration of human being and of communication among fellow creature represent, from the perspective of the mentioned, adjuvant, essential theory.

The heroes of former open conflicts will become the heroes of uninterrupted unceasing negotiations from the future. Their fundamental belief will be the human being, a creator of conflictual and juridical permissible human hypostasis but, towards a *maximus possibilum* of *noosphere*, not in the area of ontic, physical, material expression.

Thus, the individual, no matter he is a character of the juridical conflict, will be the happy captive of noesical liberty, this hypostasis not being treated as a contradiction *in terminis*, any longer.