

LAW AS AFFIRMATION OF FREEDOM AND LOVE¹

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IT BEGINS WITH HEGEL

The main goal of *Community of Difference* Milovic sets in confirming his diagnosis for modernity that opens that book: “Actual, global world is a Hegelian delirium”.³ Discussion about the “perspectives and conditions of the modern world” and asking “does it still make sense to be modern” begins with Hegel and his “synthesis of the idea of a modern constituent subject”.⁴ He will conclude that Hegel’s philosophy does not reach nor understand intersubjectivity, remaining to serve as an articulation of social subjectivity and capitalism. In his latest work *Metaphysics and Politics*, Milovic observes how metaphysics, which once served as a foundation for politics, becomes its product in the context of modernity. To understand this switch, he departs from the traditional world that ends in the modern concept of subjectivity where the subject becomes recognized.

That is why Hegel’s presuppositions are so important for his work. The modern world is a world of recognized freedom, according to Hegel. In other words, “the traditional world is moral and the modern world is free”.⁵ It is with the French Revolution that the free individuals became recognized in the Universal Declaration of Human Rights, and when the slave/master relation was overcome in the world history by the mutual recognition of the “rights to have rights”. Therefore, the Law was asserted as the realisation of freedom in modern world history because it managed to confirm the free will. The other motive Milovic gets from reading Hegel is that the world is social, and therefore freedom is a social concept, and not a natural feature that human beings need to discover. Thus, Hegel breaks with the jusnaturalism for which the state was the moment when we need to abandon our

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³ Milovic, *Zajednica razlike*, p. 11.

⁴ Milović, *Zajednica razlike*, p. 7.

⁵ Milović, *Metafísica e política*, p. 46.

freedom for the sake of stability and security. On the contrary, he observes the state as the realisation of freedom, and the dialectics of the modern state is actually a search for freedom. Finally, according to Milovic, the potentiality of Hegel's philosophy is that it shows that "we don't have to choose between jusnaturalism and positivism. By looking for another theory about the human being and reason, we can overcome both".⁶ Milovic follows this path, but now asking for a return to the concrete - to the subject that got lost in the abstractness of modernity.

FROM LANGUAGE TO POTENTIALITY

Discussion about language, as Milovic will show us, is fundamentally a discussion about the difference between at least two worlds. This difference is in the centre of his thinking about a new ontology, a weapon that Heidegger already used to kill metaphysics, because both the truth and subject are formed in the relation to language. On the other hand, the system eliminates the subject, the Being. Nothing persists on its outskirts, and here Milovic follows Habermas, defining the other as the free subject liberated from the modern rationalisation and violence of the system. Finally, we can follow Nietzsche's critique of language where each word, when becoming a concept, ceases to relate to its original meaning according to its capacity to say something about the real world and about the world of truth. In other words, we cannot say anything about the world independently of language.

Agamben, another author that Milovic reads carefully, when reflecting upon language, notes that any general notion "while remaining unthought, is nothing other than the *factum loquendi*, the pure existence of language grasped as a universal linguistic essence".⁷ The pure linguistic act is therefore always outside of the discourse and it is not determined by it, and, indeed, it is freed from it. The "forgotten", the "unspeakable", the unthought, all of them depend solely on the voice. Similarly, according to this author, human potentiality is defined in its relation with its own impotentiality - *adynamia*, and the essence of potentiality is in its relation to this impotence. Other living beings are capable only of their specific potentiality; they can only do this or that. On the other hand, human beings are animals who are capable of their own impotentiality - "the greatness of human potentiality is measured by the

⁶ Milović, **Metafísica e política**, p. 49.

⁷ Agamben, **Potentialities**: Collected Essays in Philosophy (Potentialities), p. 73.

abyss of human impotentiality”.⁸ Being capable for impotentiality, according to Agamben, is not limited to an awareness of the potentiality to not-do or to not-be, which disappears once the potentiality to be or to do is actualised, realised in reality. On the contrary, the preservation of the concept of human potentiality, as defined above, means that both potentiality and impotentiality pass fully to actuality when an act is done, and are both preserved in the act *per se*.

The incapacity to include the other posits itself as absolute and is produced in a relation between power and potentiality. On his way of understanding potentiality, Agamben moves slowly from Aristotle’s writing tablet towards whatever particularity where Leibniz’s God seems to understand very well Bartleby, a legal scribe, who has stopped writing; finally, reaching to his angel, Gabriel, with the black wing that balances the right of the actual world to not-be, with the right to-be for all other impossible worlds. Therefore, the story of potentiality is the story of the actual and non-existing worlds, of the Being and non-Being, of the abyss of potentiality where what has not happened has the right to exist. On this road filled with gods, scribes, pens and angels, we can find the glimpses of possible worlds that exist in their impotentiality, hidden in the labyrinth of the Palace of Destiny. Also, of another freedom built both upon its possibility and impossibility, where contingent is possible when its impossibility is allowed access to actuality. Finally, of a coming community and a new man, a different human being that asks for a liberation from the “oldness of the letter”, in other words, a different human being asks for a new Law and new rationality.⁹

The inoperativeness of law enables the potentiality of law, and only in its impotentiality we can search for its fulfilment. Similarly, the past can be fulfilled only in the future that it predicts, in what Benjamin calls “now-time” or *Jetztzeit*. Likewise, according to Agamben, we have to allow “that another world and another time must make themselves present in this world and time”.¹⁰ The messianic time is different from historic time, and our goal is to enable their existence without separating the worlds they refer to as “this world/the other world”. “The messianic modality, which Agamben finds in Bartleby, is thus one in which potentiality does not precede actuality but follows it, restoring it to contingency and enabling the forgotten to act on

⁸ Agamben, **Potentialities**, p. 182.

⁹ See Grujic (2019). Agamben - (Im)potentiality of law and politics. **Revista de Direito Constitucional and Econômico** 1 (1), pp. 248-270.

¹⁰ Agamben, **Potentialities**, p. 168.

the present”.¹¹ Therefore, searching for the radical paradox where something is both preserved and deactivated, without adding or destroying, means searching for the pure potentiality. Both Milovic and Agamben find Saint Paul’s “the law of faith” is the example of such a paradox, and it allows us to think about the potentiality in the law, moving away from the dialectic of constituent and constituted power. Following this idea, “justice without law is not the negation of the law, but the realisation and fulfilment, the *pleroma*, of the law”.¹² Moreover, the figure of Bartleby - a scribe who copies the law and refuses to act, can be understood as a liberation from the “oldness of the letter” that according to Agamben, Saint Paul in Romans wanted to substitute with the “newness of spirit”.

ACROSS JUSTICE AND VIOLENCE AND IN SEARCH FOR LOVE

The importance and role of violence as a mediator between Justice and Law is a relationship that Benjamin and Saint Paul perhaps reveal best. The question about the relationship between justice and violence, and how it is always fulfilled in and therefore a priori linked to a specific type of violence, legal violence, is what can connect our laws with their foundations, where the new criticism can arise. According to Derrida, one cannot speak directly about Justice, because “justice is the experience of what we cannot experience”. Therefore, Justice is always about singularity; it is neither law nor right. Reflecting on the relationship between these two, as between universal and singular, allows us to observe the possibility of Justice outside the Law in its full singular experience.

Milovic points out that for Agamben the law “has nothing to do with justice, nor with truth”.¹³ Even though he might not explicitly agree with Agamben’s critique of Derrida,¹⁴ he is of the opinion that when thinking about Derridian duality of laws outside the Law, Saint Paul connects the critique of law to the issues of justice and opens a path towards a new ontology of law that could overcome its metaphysical presuppositions. Salvation of the subject is not in the lawless. Even though in

¹¹ Whyte, “I Would Prefer Not To’: Giorgio Agamben, Bartleby and the Potentiality of the Law’ in **Law Critique**, p. 319.

¹² Agamben, **The time that remains**, p. 107.

¹³ Milovic, **Política do messianismo: algumas reflexões sobre Agamben e Derrida**, **Cadernos de Ética e Filosofia Política**, p. 104.

¹⁴ See Milovic, **Política do messianismo**: algumas reflexões sobre Agamben e Derrida.

Galatians Paul writes: “Christ redeemed us from the curse of the law” (3.13), he also asserts that “the law is spiritual [*ho nomos pneumatikos*]” (Rom. 7.14). Badiou summarises this contradiction in a distinction “between a legalising subjectivation, which *is* a power of death, and a law raised up by faith, which belongs to the spirit and to life.”¹⁵ Furthermore, continuing Agamben’s readings of Saint Paul and his extension of the concept of potentiality, Milovic will say that “with Saint Paul we can understand the possibility of justice as a general liberation of the human being.”¹⁶ For him Saint Paul reveals another possibility for Christianity based on speculation and self-critique that begins with critique of law, because laws killed Jesus.

Another very important word that needs to be considered here is love. For Paul “Christ *is* the end of the law [*telos nomou Khristos*]” (Rom. 10.4), but love is “the fulfilling of the law [*plērōma nomou hē agapē*]” (Rom. 13.10). For Badiou this paradox can be understood as a condition for love that stands for “a nonliteral law, one that gives to the faithful subject his consistency, and effectuates the postevental truth in the world.”¹⁷ In other words, love has the potentiality to realise itself as a universal, affirmative force, the truth that ends the difference between the worlds. Paul’s understanding of truth as “faith working through love” (Gal. 5.6), Badiou understands as if “the impetus of a truth ... is identical to its universality, whose subjective form, under the Pauline name of love, consists in its tirelessly addressing itself to all the others, Greeks and Jews, men and women, free men and slaves.”¹⁸ And this pure openness to the other, the care and love for the other, is perhaps the only thing we can assert about justice.

The above presented disconnect between justice and law and loss of subject in it, Milovic will accompany by reading numerous authors, but always returning to the same question: what is in the base of law, what can we define as ‘ontology’ of law. “We have to rethink ontology to be able to confront sovereignty”¹⁹ - argument that emerges in all its articulation in his critique of law. The latter cannot be found without examining the relation between justice and law, that in modern law is revealed as a relation of abandonment and violence. The modern law should not serve for particular affirmations - argument that is summarised in his critique of

¹⁵ Badiou, **Saint Paul The Foundation of Universalism**, p.87.

¹⁶ Milovic, **Ius Sive Potentia**: Paulo e Spinoza, Rev. Interd. em Cult. e Soc. (RICS), p. 357.

¹⁷ Badiou, **Saint Paul The Foundation of Universalism**, p.87.

¹⁸ Badiou, **Saint Paul The Foundation of Universalism**, p. 92.

¹⁹ Milovic, **Ontologia e soberania**: reflexões sobre Agamben e Negri, p. 253

human rights. This kind of understanding of law and laws do not establish conditions of belonging to one world, of sharing a single world. This relates to the question Badiou will also ask: “How are we to assert the existence of a single world, the indivisible world of all living beings, when it is asserted, often by violence, that such a world does not exist.”²⁰ For him, this is “a question of existence, and not (...) of character.”²¹ For Milovic, this is not an urgent question only for philosophy, but for law as well and it became necessary to think about the Law as a place of Justice, capable to recognise love and care for the Other as a universal affirmative force.

Finally, metaphysics of modern law is based on dialectics of inclusion and exclusion - that Milovic calls “principal paradox”, where we are firstly collectively and violently excluded from the law, in order to think about creating a new politics of inclusion that always depends on the system that is not based in affirmation, but exclusion. Kafka’s parable of a man from the country waiting in front of the doors of Law illustrates this dialectics perfectly. Therefore, for Milovic “the alternative for the identitary policies is not a difference [that often tends creates particular identities], but the universal, the possibility to be treated as a human being”.²² Here potentiality and the universal appear in the explicit sense.

FINAL OBSERVATIONS

Modernity for Milovic has never left the shadows of tradition - both modernity and tradition are determined by metaphysics, by nihilism and the denial of life, and we can add, by a certain form of fetishism. As an outstanding critique of modernity, Milovic never gave up on it, always thinking about the possibilities of finding rupture, places within it from where a new modernity or a new Christianity could be recognised. And in that sense, an optimist. And his optimism is not nourished only in modernity, but it flows from the springs of traditional thoughts, in Christianity, with Paul.

For Nietzsche, social is not a contract, and breaking with individualism to get to the social brings emotion and euphoria - the same reactions we can have in relation to art.²³ Milovic’s philosophy does something similar - it allows us to think

²⁰ Badiou, *The Meaning of Sarkozy*, p. 54.

²¹ Ibid.

²² Milovic, *Ius Sive Potentia*: Paulo e Spinoza, Rev. Interd. em Cult. e Soc. (RICS), p. 368.

²³ See Nietzsche, Paradox of Tragedy.

about what is not even called utopia - to think freely, to leave academic, political and national frameworks. Opening up to the other is a kind of free fall, and philosophy needs to make room for it. More importantly, his philosophy never imposes a final solution, never closes the argument and criticism and it does not depend on the limits of dialectical suppositions, which is obvious in his beautiful critique of Hegel. For Milovic, the true meaning is the creation and affirmation of life, and not the reproduction of a pre-established life. In other words, it is not only a matter of criticising the existing political-legal system, but also of having self-criticism of one's own life, which is plunged into a symbolic and individualistic abyss, afraid or without interest, to open up for love and truth, and to reach social life, to reach to the Other as to a friend. Badiou reminds us that "the address to the other of the "as oneself" (love the other as yourself) was what the Nazis wanted to abolish."²⁴ This project was realised during the war in the Balkans that always remained the main inspiration for Milovic philosophy.

Milovic's big friend, Zoran Djindjic, was saying that every crisis produces new knowledge. Our role is to recognize this knowledge and use it as a power for new affirmations. This failed to happen on the small peninsula where Milovic was born - instead of affirmation and communication, exclusion and silence still prevail, to which Milovic many times referred to as Balkan Pathologies. His philosophy is a project of memory, but also of forgetting and healing, and more importantly, a project of hope and freedom. He thinks that we might need to reinvent our own subjectivity. Perhaps that could be grounded in Badiou's understanding of the universal that "is not the negation of particularity. It is the measured advance across a distance relative to perpetually subsisting particularity."²⁵ Finally, following Nietzsche, who Milovic liked to read so much, this given reality and religiously recognized as universal is nothing more than a metaphysical consolation.

Milovic underlines that we do not need more laws in the future; we need to affirm our freedom and love to the other as our purest potency. "The laws are not connecting us with the possibility of our own potentiality. They relate us to objects. (...) they relate our desires to objects and articulate the conditions of satisfaction. That is the meaning of the laws. Finally, they treat us almost like animals, as Hegel

²⁴ Badiou, **Saint Paul The Foundation of Universalism**, p. 110.

²⁵ Ibid.

thinks in the *Phenomenology of Spirit*.”²⁶ They posit the concept of human life, and life in general, opposite to freedom, and moreover, encapsulating the subject into an identity framed by politics of exclusion. Life as potency. Life as scandal of truth - naked, violent, life that scandalously manifests the truth, using words of Foucault. To reach justice, law needs to affirm this kind of life, and to be able to communicate with, to experience human life in all its particularity and universality, instead of redefining it according to the ‘logic’ of modern rationality and capitalism that puts “the body in the place of morality. Or, with Francisco Ortega’s beautiful words, following Foucault, we *lost the world and we gained the body*.”²⁷

For Agamben, the messiah will arrive on a donkey, when no one is looking. Nietzsche says thoughts that come on doves’ feet direct the world to surprise us in the moment of greatest silence. We can see how both authors were most careful readers of Saint Paul who wrote: “The day of the Lord will come like a thief in the night” (Thessalonians I, 5.2). Milovic, on the other hand, does not need an event, but action: we must resist, otherwise the world will increasingly become a concentration camp.²⁸ This is the beauty and urgency of his thought and his spirit that continues to inspire us. “In the end, resurrection is the gift of the divine. And the Spiritual is not only in this gift, but in something that still has to be done. Perhaps by and for the human being itself. The Spiritual as the possibility of the human Freedom, linked to the Spiritual, as the possibility yet to happen.”²⁹

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²⁶ Milovic, **Ius Sive Potentia**: Paulo e Spinoza, Rev. Interd. em Cult. e Soc. (RICS), p. 360.

²⁷ Milovic, **The Right to the Body in Nietzsche and Foucault**. Latin American Human Rights Studies, v. 1, p. 7.

²⁸ Milovic, **Necrópole da vida Nua**, Paralelismos entre Agamben e Pahor. Profanações, 7, 2020, p. 387-393.

²⁹ Milovic, **Ius Sive Potentia**: Paulo e Spinoza, Rev. Interd. em Cult. e Soc. (RICS), p. 360.

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