

Immersed in a Normative Lab

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The COVID-19 pandemic has progressively caused, on top of the sanitary emergency, also an economic and a political one: the latter, in particular, has recently been interpreted through the philosophical-juridical paradigm of the state of exception, i.e. of the suspension of the democratic communicative regime, in favour of decisionism. Hungary and some other cases apart, quite on the contrary, the risk of such confused reading should be avoided: there is nothing exceptional, from the juridical point of view, in the moment we are undergoing. The situation is, rather, such that we find ourselves *immersed* in a normative lab, in which we are living a total experience of what it means to have our existence regulated by legal norms. Legal instruments like the necessity and urgency decrees or the derogation are foreseen, for instance, both in the Italian [Constitution](#) (Art. 77) and by the EU [Convention](#) on human rights (Art. 15).

Against this background, the emergency laws which are increasingly entering into the rhythms of our daily choices are compressing the fundamental rights of us all, without exceptions, because of the need to balance the freedom of *each individual* with the collective right to health and security, which are fundamental goods of *everyone*. In order to do so, the legal operations during the emergency can intervene only under certain circumstances: there must be a state of necessity; a proportional logic must be guaranteed; these should be the only measures left that can be used and, conclusively, these measures should not undermine the essential nucleus of fundamental rights.

Thus, beginning a month and a half ago, we have been experiencing, especially in Italy, something that before could have been foreseen only through a mental experiment: following (some more, some less) the emergent norms that have made our days similar to the life inside a normative lab, we are making a direct experience of *what is the law*, of its impact and of its *hold on life*. We act, in other words, like test animals inside a model which would have been useful to a normativist like Hans Kelsen. Here, we witness changes and reductions, following singular and very general normative sources (urgency decrees), of our personal freedom, freedom of movement, freedom on economic initiative, etc. – among others. At the same time and symmetrically, we expose and circulate (more or less voluntarily) data that profile ourselves and that are extremely useful to subjects we can't even imagine.

For decades now, especially among legal anthropologists, there have been interesting studies on the concept of legal consciousness, i.e. on how we perceive and understand an intangible artifice like the law, which (almost always) vinculates us without our complete perception of its bonds. This seems to be instead the moment in which legal consciousness emerges in each one of us: it is penetrating into our imaginary more than when – automatically – we stop in front of a red light before crossing on the white stripes, or when we pay our taxes. By now, we expect

that that law is imperceptible to our daily experience, because we are used to its invisible presence. Nowadays, inside the normative lab, each one of us (re-)lives the feeling of a three years old to which we tell that he *cannot* eat that candy that he absolutely *wants* to eat (and now!): we are going back to feel the chains. We are, thus, capable to see the bonds instituted by the law to contain our pulsions and our needs, from the morning till the evening, because we are having a direct prolonged and continuous experience of such bonds. Just as if we were inside a laboratory, the current condition allows us to look with a magnifying glass inside the nucleus of the concept of law, revealing the conundrum on which the connection between individuals and the law is based. In the first place, the “privileged” perspective in which we are immersed shows an interesting fold in the relationship between law and force – a theme that has crossed the history of juridical thought since antiquity and that we find in Montaigne, Pascal and lastly in the beautiful pages of Derrida on the mystical foundation of juridical authority. In light of the experience that we are living, the aspect that seems to be emerging is that in the relationship between law and force the element of cooperation should not be disregarded. Such element makes possible the *grip* of the norms on our life. In other terms: these decrees are often characterized by a general and abstract language more than it is usual for legal norms, and in the first decrees promulgated one could even find expressions like ‘it is suggested’ or ‘it would be preferable’. Nonetheless, some exceptions apart, it seems that these norms are widely respected. Why? In which way and for what reasons the level of legal consciousness is varying in the current situation? When we stop in front of the red lights, we adequate to a practical normativity we are used to, taking for granted the legitimacy of the normative source: in such case, habit makes us perceive the act of following the norm as a fulfillment of our own will, in the form of the *respect* for a daily legality that we *owe* to the society. In the case of the decrees, we likewise perceive the heteronomous nature of the source of the obligation to do or do not; what makes these decrees particularly effective, more than the fear of the sanction, is the content or *end* which those norms intend to realize (more security and health for each one). Beyond this, to conclude on the first aspect, there is certainly also the individual dread for the potential consequences that the contagion could have on us and our families. In other terms, on top of the normative force deriving from their content, these decrees are effective because the current situation has (re)awakened a fear, an Hobbesian *metus*, that brings us back to a new *state of nature*.

On the second point. While we assist to the resurgence of categories, like the state of exception, that seem to fit all seasons (but wrongly), we have instead the chance to understand what it means, for each one of us and for everyone, to obey the law in order to witness, unhappily, to the “sacrificial” advantages of civilization or *Kultur*, following Freud. The tension between our pulsions and the regulatory force of the (almost) daily decrees, is showing – almost a century after the societal psychoanalysis by Sigmund Freud – how human relations can be productive only if they entail repressions. In the Freudian project, the primordial man was feeling better than us because he had no repressions. Yet, his condition was only apparently better, because he could not fully enjoy his freedom: without *deprivations* for *each one*, *distress* and *discomfort* grow for *everyone*, in the forms of insecurity, prevarication, and death.

In addition to this, and thirdly, the mediation between individual freedom and the highest wealth for the largest number of people is showing all its fragility: as reasonable as the sacrifices we are asked to face can be, emergency laws intensify the vulnerability of everyone. Consequently, these sacrifices radicalize the situation of those who are ordinarily vulnerable: not only as it is obvious, of women, children and old people, but also (among others) of migrants, inmates, single mothers, illegal workers. The normative lab in which we are immersed reveals, thus, the ambivalent capacities of legal norms: on the one hand, by clarifying characters of social regulation otherwise imperceptible; on the other hand, strengthening the *raison d'être* but also the precariousness of the normative structure forming our social regulation. The laws, in other words, are artifices functional to realize a precise task: in the short run, they aim at conducting us outside the hobbesian state of nature and they should prevent the risks of the conflict of everyone against everyone else. In the long run, and through the historical crises, they should however work like the tendons inside a body: compensating, slowing down, and pushing where necessary. The exchange between *repression* and *relation* must, thus, always aim at something. Therefore, if on the one hand it seems plausible to claim that, in the future, as incredible as it may sound, theorizing the law will correspond again, almost four centuries after the *Leviathan*, to find solutions for the survival of the species; on the other hand, the immersive experience – not at all virtual – that we having, outside all philanthropic rhetoric, should lead us to reflect on the insufficiency of our legal and institutional instruments. Immersed in a normative lab, just like scientists and therefore observing, inducing and deducing *why* and *how* the social objects that we name ‘norms’ do work, we have the chance to look at the law through the values the the normative orders should realize. Among these, undoubtedly, equality and freedom: values that have always been complicit and rival, and among which lays down the opportunity – better: the hope – for the realization of a just society.

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