Interpersonal conflicts and the constitution of the subject of Law

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1. Interpersonal conflicts and violence

To introduce the study of the relation between interpersonal conflicts and violence we will introduce the definition of violence by the World Health Organization (www.euro.who.int):

> The intentional use of physical force or power, threatened or actual, against oneself, another person or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation.This includes interpersonal violence (occurring between individuals), self-directed violence (suicide and other forms of self-harm), and collective violence (occurring between groups, such as wars).

According to that definition violence can be classified into three categories: a) self-directed**:** forms of self-harm; b) interpersonal**:** occurring between individuals and c) collective**:** inflicted by the government, political groups, militias or terrorist organizations. We are mainly concerned with interpersonal violence, which can be divided into: a) violence occurring between family members or intimate partners; and b) violence occurring between members of a community.

Interpersonal violence is recurrent in Brazil and around the world, reaching many vulnerable groups such as women, youth and children. One possible explanation for these numbers is that in family or intimate partners exists an ambivalence of feelings between love and hate, attraction and repulsion (Coser:1966, p.51) Therefore, we can assume that there is a correlation between the closeness of the relationship and the intensity of the conflict (Coser:1966, p. 57).

We observe that in interpersonal relationships between intimate partners or between people within a community (knowing or not knowing each other) a high number of homicides result from these relationships. In his dissertation, Renato Sérgio de Lima (2002, p. 76) points out that in 1995 the highest number of homicides in the city of São Paulo had different interpersonal conflicts as the "main triggering factor". With reference to homicides the author observes that "the private and violent logic to conflict resolution would be determining the movement of these crimes". Within a context of lack of government the private conflict resolution appears as an alternative. This article is not intended to perform a statistical discussion of homicide, nor about "authoritarianism socially implemented" [1]: our aim is to demonstrate the way in which violence acts in solving an interpersonal conflict. We present a veritable traffic dispute that will help us understand this topic.

1.1 Interpersonal conflicts: an illustrative fact

[1]Expression by Paulo Sérgio Pinheiro in *Autoritarismo e transição.*

The following event is an interpersonal conflict which occurred within a community. Precisely: on the one hand two people in a car and on the other hundreds of cyclists in the city of Porto Alegre (Brazil) in February 25 of 2011 (a Friday). The conflict ended in a trampling. The news (Folha de São Paulo March 01st, 2011, p. C 10):

> Last Friday in Porto Alegre, after running over 16 cyclists and escaping without rendering assistance and abandoning the car with no license plates, Central Bank official Ricardo Reis, 47, presented himself to the police and claimed legitimate self-defense - said he feared being lynched.
> (...) The trampling occurred at 7:10PM on Friday, when the driver rushed against 130 people who participated in a bike ride.
> Images captured by mobile phones and exhibited on social networking sites show bikes flying after colliding with the black Golf in acceleration, screams and the car on the run.

What draws attention in that piece of news is not only the driver's violence against the unarmed cyclists as well as his complete unwillingness to dialogue. Before hundreds of people that worked as an obstacle for him, Ricardo Reis (the driver) did not attempt to talk, to dialogue, to ask the protesters to get out of his way. His reaction was "literally" to run over them. Accordingly, a driver (with his 15 year old son) runs over 16 cyclists.

This event illustrates the conditions that end up establishing an environment which favors violence as a form of solving conflicts. They are: a) the existence of an environment tolerant of violence, b) the absence of authorities able to promote dialogue and c) an exacerbated sense of individualism.

The hypothesis of a centripetal and harmonious group is impossible and would not allow the emergence of any vital process and no solid structure (Simmel:1964, p.11). In this

way the conflict should not be viewed negatively, but as one of the elementary forms in the socialization process (Simmel: 1964,p.12). It is vital to understand that the acceptance of violence as a form of conflict resolution is also recurrent in a community when people have a limited social participation in the group, being somewhat involved with their peers (Coser:1956, p. 92).

In the next section we will study the two antagonistic forces that oppose the pursuit of solving a conflict.

1.2. Power and Dialogue

The incident with the cyclists in Porto Alegre reveals the underlying logic of a personal and private means of solving conflicts. The car as an icon of modern individualism (Matta:2010, p.24) runs over more than a hundred bicycles. Bicycle is an individual, non pollutant means of transport which in addition to encourage social interaction, makes a rational use of public space.

The driver has another experience as a private car driver and before the cyclists he adopts the ethics of power. The comment of Bobbio (2009:p.205) on this issue is precise:

> When I talk about power relationships- and relationships between major states is of persistent anarchy regarding international relations, despite the United Nations, are essentially relations of power-, I intend to talk about relations between two individuals or groups in which there is an intrinsic tendency to one part crush the other.

As for interpersonal relationships, we can choose between the exercise of power or dialogue. At the end it is a choice between a violent and a non violent form of action. Social interaction serves both as a stimulating factor and a challenge to the practice of dialogue but unlimited individualism is merely an invitation to the exercise of power.

The next section will discuss the way in which the concept of individual and person played a vital role in the history of modern Western law and how individualism has become an essential feature of Western society.

1.2.1. Individual and individualism

> Ainsi naît avec la personne une autre sorte de justice, plus complete et plus riche, mais placée au dessus de toute limite imposée par une morale sociale ou politique ou par par le droit, et saissant dans l''universalité d'' un príncipe de vie individuel la source d''une valeur absolue. (Trigeaud : 1989, p.120)

For the premodern, human beings law depended on their social class and therefore not all human beings were considered as individuals and subjects of law. It is under the modern natural law that the concept of person as an individual assumes a central place in the history of Western law. "Individualism as ideology" (Dumont:1991,p.37) is a remarkable and differential aspect of both Western society and Western law, unlike other societies such as Indian and African, considered holistic. This "ideology" has deep historical roots in the French Revolution. One of the first acts which took place on the night of August 4, 1789, decreed the abolition of privileges of the nobility founded on two principles: 1) individualism; and 2) equal rights (Carbasse 2010:110).

Within a context of a hyper individualist culture, typical of contemporary Western society, choosing between a form of conflict resolution that is characterized by the exercise of power ethics instead of the dialogue ethics is, to say the least, understandable. It important

to know that power only recognizes itself and as a consequence, in many cases, the exercise of power cannot be distinguished from the exercise of violence. If the exercise of power often comes with violence, dialogue is an indispensable instrument for solving conflicts in a non violent manner since recognizing the other as a person is a prerequisite for the establishment of dialogue (Bobbio;2009, p.208). Being capable of dialogue the human person will be able to become a subject of law.

2. The subject of law

The irreplaceable and sole individual, but similar to others, becomes a subject under the Law, which ensures his identity and forbids him to be treated as a thing[2]. The etymology of the word is revealing: the "subject", which should obey a higher law that is submitted to all. The human being is defined as a subject by the grace of a dogma of the Law (Supiot: 2007 p.15).

To be a subject of law means the possibility to participate in the public sphere, respecting yourself and others. The law as recognition pattern is dual, being related both to the effectiveness of the rule and the mutual recognition of the ability of the subjects. It is in this process of expansion of the rights granted, and improvement of the capabilities that subjects recognize themselves in a reciprocal manner - it is where the *struggle for recognition takes place.*

Nevertheless, in order to take part in this struggle one should consider himself and be considered a subject of law. To understand the possibility of claiming rights as an inherent characteristic of the subject of law is something common to Ricoeur and Honneth. In this respect it is interesting to note that both authors make reference to the text *"The nature and*

value of rights", by Joel Feinberg, in which the author defines human dignity as "the recognizable capacity to assert claims"[3] The lack of self-respect prevents the subject's active participation in public space as a citizen and also the possibility to claim rights before the government.

Every subject of law is a person but not everyone is a subject of law. In view of this basic observation it is possible to formulate the concept of non-legal subject (Carbonnier 1989:205). It is important to be clear that between the non-legal subject and the subject of law there is a boundary that requires an institutional mediation to be overcome in order that the subject of law is not entirely transformed into the subject of law. When such institutional mediation is not performed, the experience of legal recognition is not carried out in its fullness creating as a direct consequence an absence of self-respect, which in practical terms means "(...) losing the ability to refer to himself as an equal partner in the interaction with one's neighbour" (Honnet 2003:p.217).

According to Honneth (2003:p.211), the deprivation of rights it is a form of disrespect under the pattern recognition by the law, affecting - after all - the social integrity of the person. One of the forms that deprivation of rights can assume is violence. Because violence against himself or against people in his peer group have interrupted the process of constituting the subject of law, the person does not gain the self-respect in respect to itself and - consequently - the respect and consideration towards others. With the absence of self-respect the outbreak of violence emerges as a possible response.

Thus the institutional mediation for the constitution of the subject of law (Ricoeur;2008, p.26) is a crucial task for the increment of democracy in all countries from the international community. This assignment rest with the Government and should be

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[3]Axel HONNETH,*Luta por Reconhecimento*, page 196. Honneth quotes this author in*Luta por Reconhecimento*, page 196, and Ricoeur in *Parcours de la recoinassance*, page 315.

complemented by representatives from civil society and universities, as well as all schools and pedagogical spaces in general.

As seen earlier recognition is a prerequisite, a first step for the exercise of dialogue. Once recognized both subjects of a relationship an environment that favors the dialogical process of subject of law constitution can be established. Non-violence is the distinctive feature of that environment. Violence in the discourse is the claim of a given language to take the power of word and to be non violent in discourse is to respect plurality and diversity of languages (Ricoeur 1991:p.132). For that reason, to maintain a public space in which plural discourses can manifest itself is to support the existence of a space for non-violent forms to act and speak.

In order to establish favorable environments to the recognition and dialogue, mediation emerges as a possibility to achieve this end. It is essential to bear in mind that mediation is not a panacea for all ills; much less the most appropriate means to solve all forms of conflict. But after all what is mediation? What about mediation of social cohesion? There are several answers to these questions, various models of mediation and also various types of mediation: family, social, labor, public sector, businesses, health, politics. For purposes of this paper we present a definition of mediation and a discussion that helps to elucidate the historical background of mediation and then present the definition of mediation of social cohesion.

The dogmatic definition by Michèle Guillaume-Hofnung is an attempt to present the main characteristics of all types and models of mediation (1995 :p.72):

> "Globalement la médiation se définit avant tout comme un processus de communication éthique reposant sur la responsabilité et l'autonomie des participants, dans lequel un tiers -impartial, indépendant, neutre, sans pouvoir décisionnel ou consultatif, avec la seule autorité que lui reconnaissent les médieurs- favorise par des entretiens confidentiels

l'établissement, le rétablissement du lien social, la prévention ou le réglement de la situation en cause."

Being in the middle is the etymological origin and main feature of mediation, it is what explains Jacqueline Morineau (2010:p.22)

> 'Médiation' signifie 'être au milieu de'. Son emploi le plus ancien remonte à l'ecriture sumérien. Il avait alors une fonction théologique d'íntermédiaire entre Dieu et l'homme. Puis 'médiation' a eu le sens de division pour prendre enfin le sens moderne 'd'entremise destinée à concilier des personnes, des parties'. Le mot indique la position du médiateur 'entre' lês deux personnes ou le deux parties en conflit. Le positionnement 'entre' est nécessaire pour rencontrer ce qui est au coeur du conflit.
> Dans tous conflit se crée um espace, um vide qui isole chacun dans sons vécu. Vide que chacun essaie désespérément de combler par des mots qui restent sans signification pour celui auquel ils sont adresses. Ces mots, finalement, chacun lês dits pour soi même puisque l'autre ne peut pás les entendre. Deux monologues se répondent, chacun restant isole par um mur infranchissable.

The mediator's role, rather than the decision of a conflict, is to enable participants to make use of the word, to allow (through his carefully listening and mild intervention) reduce the distance between the parties. This is the reason for the name "mediation of social cohesion", which aims to unite the social ties frayed. The following definition is from final documents of the seminar held in Créteil France in September 2000 and which aimed to discuss issues related to the city. One of the topics discussed was the mediation of social cohesion, which was defined as: (Morineau 2010:p.25)

> Processus de création et de réparation du lien social et de règlement des conflits de la vie quotidienne, dans lequel um tiers impartial et indépendant tente, à travers l'organisation d'echanges entre les personnes ou les institutions, de les aider à améliorer une relation ou de régler um conflit qui lês oppose.

The mediation of social cohesion poses the challenge to think the conflict not only from a merely technical perspective, but invites us to another look, a look that makes it possible to see two people in conflict (with his words and certainties) trying to somehow meet in a common space. In this case the only common space is the space of dialogue. Therefore, when other dimensions of the conflict are recognized it can be seen as an "opportunity for moral growth" (MacDonald and Savoie 2006:p.289) From this perspective the person participant in the conflict have the possibility to become someone who actively contributes to a non-violent conflict resolution. A subject by the law (Morineau : 2010, p.62) :

> Elle pose le sujet comme le principal artisan de la vie sociale: c´est à partir de lui que se construit la realité dans laquele il vit ainsi que les situations auxquels Il est confronte:on pourrait dire que le droit comme la realité ne se donne pás à nous comme logos mais s´offre à nous comme *mythos*, comme cet horizon dans lequel nous situons notre propre idée du monde .

Looking at the conflict as an opportunity for the emergence of subjectivity is to enable the emergence of new possibilities for conflict resolution, not by a decision imposed by a neutral third party, but by finding a common decision that satisfies everyone involved in the conflict, providing them a shared sense of existence.

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