

Deaths in the Mediterranean: Immigrants and Refugees, from Rights-Bearing Infrasubjects to Security Threats

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Today, the waters of the Mediterranean are the most dangerous in the world in terms of numbers of deaths and losses among those who embark in the south to try to reach European coasts. Added to this serious problem is the posture of governments of European Mediterranean countries on migration and asylum policies, characterised by an obsession with absolute control of their borders, so that they can only be crossed by immigrants expressly desired and who comply with all the legal requisites to do so. This not only annuls freedom of movement as a right, but also removes other fundamental human rights. The basic instinct of solidarity, a fundamental part of the awareness of jointly belonging to humanity and the notion of civilisation, is thus seriously threatened by these policies.

The Mediterranean Is No Longer *Mare Nostrum*

The existence of common interests, ways of life, traditions and cultural features shared between both shores of the Mediterranean seems to be vanishing. The harsh reality is that our inner sea is the most important demographic fault line on the planet (even more than the border between the USA and Mexico), given the inverse proportion between demographic rate and the average age of the southern countries compared with the wealth (GDP) of the European Mediterranean riparian states. Data from the International Organization for

Migration and the United Nations High Commission for Refugees (UNHCR) add the tragic element that the waters of the Mediterranean are the most dangerous in the world in terms of numbers of deaths and losses among those who embark in the south to try to reach European coasts. This is despite the fact that Italy has made an enormous police and military effort to avoid the tragic shipwrecks that moved the world in 2013 and early 2014. This effort has received tentative help from the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), with the opposition, for example, of

the United Kingdom. Indeed, Prime Minister David Cameron's Government is not concerned with the obligation of solidarity in helping to prevent these losses of human lives.

For its part and although the weight of movements of immigrants and refugees who try to cross the Mediterranean to the coasts of Greece, Malta and Italy is incomparably greater than the migration pressure experienced by Ceuta and Melilla, Spanish *plazas de soberanía* ("places of sovereignty") in Africa, the Spanish government is still presenting to the public a situation of extreme need against which it acts as if they were besieged fortresses and that results, moreover, in a major loss of human lives.

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There is another particularly serious unacceptable cost: the damage caused to the Rule of Law by the responses adopted by the governments of the European Mediterranean countries in terms of migration and asylum policies, driven by the obsession with absolute control of their borders to avoid anyone crossing them who is not an immigrant expressly desired and complying with all legal requisites. As we will see, in the first place these responses undermine freedom of movement as a right; that is, the right to immigrate as a fundamental human right in the full sense (that is, as a right to remain in the country; in other words, the right not to emigrate, which means that the decision to become an emigrant is the result of a free decision, and not out of necessity; and alongside this, the right to emigrate to another country and settle there – the three intrinsically

connected with the notion of autonomous life plans). Moreover, these responses imply the removal of other fundamental human rights (a sufficiently eloquent example would be what happened in Spain in terms of the right of immigrants – including irregular immigrants – to healthcare after the coming into force of Royal Decree 16/2012).¹

However, the first warning that would have to be made is that the aim to completely close borders to achieve absolute and unilateral control of transit through them is a desideratum as unachievable as the opposite aim, that of abolishing them completely. The reasons underpinning a thesis widely shared today have been discussed ad nauseam, making it clear that despite the proclamation as the *sine qua non* objective of all migration policies of the need for absolute control of borders in terms of a filter that does not let the undesired pass through (for being a dangerous criminal – today, a suspected Jihadist terrorist, the big new fear sweeping the West – or an "illegal" immigrant), it is almost impossible to provide examples of states whose territory is completely closed. And this is in spite of all the combined efforts in the EU of advanced border security systems using technological instruments. The *porosity* of the borders is one of the manifest paradoxes of the process of globalisation, of the possibilities of mobility and, above all, of the visibility of inequality that global communications put within the reach of the peoples who suffer the worst human development indexes. This development index includes freedoms and risks to life, as well as the guaranteed assistance for sickness and poverty. It is also clear that the accelerated process of globalisation is the result not only of the loss of real sovereignty of most states to the agencies of transnational power, but of a new model of global market and international division of labour. Its characteris-

1. Reform of the national health system in Spain, whereby irregular foreigners are not entitled to health care.

tics are devastating in terms of incompatibility with basic standards of recognition and guarantee of human and fundamental rights. I refer, of course, to the systems of relocation of work in the framework of new networks or circuits of production and exchange. These systems are subject to the demand of the maximisation of profits imposed by the global market, and the precarity/shelf-life of goods and workers, which has brought about the category of the *precariat*, which includes that of replaceable or disposable workers. All of this, I repeat once again, blurs the old dogma of the monopoly of state sovereignty over its own territory, although more scandalously visible in the case of the EU, with a variable geometry of definition of its territory and borders. This geometry finally has an impact on the mobility of its own citizens, as we are now seeing in the cases of Belgium, Germany or the United Kingdom in terms of citizens of third countries of the EU itself, who are catalogued as an excessive cost for the welfare state of the aforementioned countries.

The Cost for the Rule of Law of a Police-Military Policy to Shield Borders

In the case of the borders of Ceuta and Melilla, Spanish Mediterranean *plazas de soberanía* in Africa, the evolution of the border control policies applied there show worrying features as being manifestly incompatible with the recognition and guarantee of human rights of immigrants (and refugees) and the resulting cost of human lives. They are, so to speak, the vanguard of an option for a certain “permanent state of exception” that involves a serious failure of principles, values, regulations and institutions of the Rule of Law.

In a sense, it can be said that since the rapidly worsening conditions of the welfare state in Spain, as a consequence of the implemen-

tation of “crisis management” policies (from 2008), which have meant major cuts in rights and increases in inequality and the poverty rate (also among the child population) that places Spain at the bottom of EU countries, what since Agambem’s analysis has been theorised as the option of a “permanent state of exception”, as explained by the French jurist Danièle Lochak, has taken shape.

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Indeed, around the borders of Ceuta and Melilla (not only these borders, but certainly primarily) administrative and police practices have been created and developed that are supposedly justified by the risk and threat from groups stigmatised or construed as the aggressor or external enemy. Thus, not only has a “criminal law of the enemy” been developed but even an “administrative law of the enemy” (coherent with the shift in security of a political language that conceives immigration and, consequently, the movement of refugees, as a problem). This is used by the administration to send citizens the message that, although there are reasons for fear as a consequence of that threat, the state will protect them from those dangers. Thus, incidentally, this same state will manage to recover the support that had been withheld by the classes that have suffered most from the management of the crisis.

One of the greatest costs of that strategy is that, as anticipated by Ferguson in his *An Essay on the History of Civil Society*, that discourse eliminates the notion of citizen, who returns to the status of subject, albeit consumer. The assumptions of this message are clearly fallacious:

- Contrary to the view, for example, of the Spanish representative appearing before the Human Rights Council meeting in its periodic session in January 2015 in Geneva, those *plazas de soberanía* do not support continuous “violent assaults” inherent to a migration pressure whose volume is not impossible to manage, above all compared to Italy and Greece;
- the stubborn reality shows that the immense majority of immigrants called “illegal”, irregular, reach Spain through air and land borders in the peninsula;
- and, above all, this strategy causes immense damage to a basic right, that of asylum, especially in relation to refugees trying to reach the European Union from Syria and, to a lesser extent, Mali.

The Threat of These Policies for Refugees

I will start by noting that if it has been possible to define asylum as *Urrecht*, as the first right, it is because it is rooted in an original instinct, inherent to our status as both human beings and social beings. If I had to give this instinct a name, I would risk calling it solidarity, which is something more than cooperation. This something more comes precisely out of what I understand by solidarity, which is not moral platitude or a substitute for equality, but complementary to it, just as understood the French revolutionaries. Solidarity is the *conditio sine qua non* of stability and progress of societies, as explained by the great Ibn Khadul when he analysed the concept of *assabiyah* in his monumental work *Muqaddimah*. From those starting points (to which one must add the great tradition that began with Durkheim), I will say that by solidarity I understand the general awareness of rights and obligations that is awakened or sharpened wherever we

find ourselves faced with the imminent presence or threat of a danger perceived as shared. From there also comes the notion of the duty of hospitality. Because the awareness that these dangers can reach us reveals that we are all threatened, even if at first it is only a few remote individuals. *All of us, in one moment or another, can need to be offered refuge.*

In fact, the foundation of asylum is the sanctity of life. Something that goes beyond religions and the traditions of respecting the sacred. Yes, it is true: the sacred begins in the place of religion, but that is because the first sanctity is that of life, above any other consideration, any human attribute of sex, race, language, nation, religion. As I will explain next, in my view this secular sanctity of life is the humus in which the instinct of giving refuge is rooted and that demands an institution that condenses the basic legal principles: *humanitas, dignitas, pietas.*

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Both ideas, both demands, are increasingly more necessary in the international framework in which we move, in which there are increasingly more causes of persecution, more factors that cause the flight or forced displacement of increasingly more millions of people. I will try to explain this in more detail.

As I was saying, the first thing to note is that the institution of asylum responds to the demand of the very notion of humanity, in two senses of the term and without recognition of which survival, society itself, is not possible.

Indeed, asylum is rooted in the recognition of the *sanctity of life*, of the life of the other, of that other who appears before us threatened, vulnerable, deprived of any status other than that of being human. Therefore, asylum

is above all a *basic* instinct, that of protecting whoever asks us for refuge because they are in flight, because they are threatened by a danger. Asylum is, therefore, a demand for humanity, in the first sense of the term, which involves the instinct of recognising the other and helping, protecting that threatened other.

Moreover, as I have also mentioned, in that instinct of humanity we find *in nuce* the basic elements around which Greek genius expressed the notion of unwritten laws common to all, those *agrafoi nomoi* that Antigone invoked, and among which is found the *pietas* with the other, even with the enemy, as the great 20th century philosopher Simone Weil saw in her essay *The Iliad or the Poem of Force*. One of these *agrafoi nomoi* is also *hospitality*, in which universal recognition of the other is rooted (as Kant explains) and justifies the right to asylum.

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Together with that Greek genius, another, the Roman, gave birth to the same idea of Law, as a written rule and endowed with *imperium*, binding. This is how the instinct to protect gave way to the legal institution of asylum, linked to more basic legal principles. Thus, the awareness of jointly belonging to humanity, the notion of *humanitas* binds us all together as *membrum humani generis*; that is, as subjects of a single community, that of the human genus.

In this way, we find the second meaning of the notion of humanity. Indeed, if we talk of a universal community of all human beings, it is because we recognise in all of them the valiant character of every human being, of their lives; that is, *dignitas*. This is how the duty emerges of responding to the danger threatening the other, of taking care of him, of *pietas*, solidari-

ty, whose first manifestation is the duty of *hospitalitas*, hospitality as a universal mandate. And this is what recognition of universal rules will imply, an *omnium gentium* Law.

Therefore, when I talk of the “sanctity of life”, of that universal duty to welcome anyone seeking refuge, I am not talking about a religious or cultural mandate, typical of this or that religion, church, ideology or culture. I refer, rather, to a principle that is enunciated as a right in the heart of Greco-Roman culture but is replete with universality, cross-culturalism.

I am talking about an intellectual tradition that begins in stoicism and is expressed in Seneca’s formula, *homo homini sacra res*, or in Terence’s less sophisticated formula, when in 167 BC he wrote in his comedy *Heautontimoroumenos*: *Homo sum, humani nihil a me alienum puto*. Although our Miguel de Unamuno was able to reformulate and specify it when at the start of his essay *Tragic Sense of Life* he wrote: “*Homo sum; nihil humani a me alienum puto*, said the Latin playwright. And I would rather say, *Nullum hominem a me alienum puto*: I am a man; no other man do I deem a stranger. For to me the adjective *humanus* is no less suspect than its abstract substantive *humanitas*, humanity. Neither “the human” nor “humanity,” neither the simple adjective nor the substantivized adjective, but the concrete substantive man.”

I am talking about the tradition of humanism represented by Pico della Mirandola, Montaigne and John Donne, from the Enlightenment (from Ferguson and Swift to Kant and Marx, yes, Marx), of the best liberalism (that of J. S. Mill and Tocqueville), the feminism of Olympe de Gouges and Mary Wollstonecraft, the tradition of rebelliousness of Kafka, Camus and Orwell... What would they say to us about our conformity, our passiveness, our fear of the other converted into the political *passe-partout* in this outdated Europe? About our passiveness and indifference to the fate of

tens of thousands of immigrants and refugees, before our eyes that look without seeing?

I repeat: the right to asylum is the elemental legal mechanism with which we react to the threat besetting the status of those millions of human beings who live a parody of life, an existence worse than virtual, vicarious. Because it is not life but simulacrum of life, the situation of uncertainty, of hope, of anxiety, of a no man's land in which those human beings find themselves confined. It is the anguish of a suspended life, without knowing if they will obtain the minimum recognition, that basic legal security that is the right to have right, which is guaranteed to all of us; all, except them, the *refugees*.

In a world in which increasingly more human beings need to receive protection, because there are increasingly more risks, more threats, asylum is in constant retreat

Let us remember that asylum provides that first protection that consists of not rejecting – *non refolement* – anyone who seeks refuge, of not abandoning them or, even worse, leaving them in the hands of those pursuing them. This is the duty of all those states that are part of the system of international refugee law at the centre of which is the Geneva Convention 1951. This convention specifies the system of conventions that, also in Geneva and in 1949, had sought to respond to the challenges of the experience of war, and create the core of what we know as International Humanitarian Law. The Convention of 1951 and the New York Protocol of 1966 establish and regulate the protection involved in asylum.

However, in a world in which increasingly more human beings need to receive that protection, because there are increasingly more risks, more threats, asylum is in constant retreat. This largely concerns old threats that have been the nightmare of humanity. Wars, armed conflicts

and violence multiply and are increasingly more lethal, tear regions and entire peoples apart and force millions of people to move and leave their homes behind. Humanitarian needs are growing and poverty is taking root in many places. Inequalities are breaking apart societies and communities we thought were stable. Simultaneously, discrimination and rejection of the other is the mainstay of many political discourses and media agendas.

The most decisive aspect, I repeat, is that those risks and threats question the basic principle (and the duty derived from it, the responsibility of each and every one of us) of sacred respect for life, a value without which there can be no civilisation. I have also endeavoured to recall that from that absolute conviction comes the very notion of humanity, the transforming impulse that overcomes barriers of religion, language, race, nation and that, from the stoics to the humanists and the Enlightenment, strives to confront the destructive impulses of hate, prejudice and ignorance, which are behind war, disrespect, discrimination, domination and persecution of the other. Therefore, I have tried to explain how asylum emerges from the depth of the civilising impulse that recognises what we share with each other and all others and leads us to protect life, to welcome those who are not like us, to give them hospitality and, even more, to offer them protection when they come to us in search of refuge from the persecution threatening their life, integrity and freedom. Asylum is, therefore, a genuine impulse born of our awareness of solidarity with other human beings, accentuated when they are in danger. The development of civilisation, through that cultural tool that is Law, has given birth to the guarantee of that impulse of humanity: the right to asylum. An institution without which a good many human beings lack the right to have rights.

The countries of the EU should (in solidarity with the pressure endured by Mediterranean

countries – ergo Germany too – by the flow of refugees) adopt broader policies in proportion to the need to rebel against indignity, against the moral poverty that means today, through the real time view provided by television and radio stations, millions of people live alongside us (because in the global world there is no longer distance) who, in terms of technology and progress, are still at a stage prior to that spark of civilisation ignited by the emergence of Law. I am not talking about the barbarism of past times. I am talking about here and now, because in recent weeks, we have heard about the campaign of the Australian government (basically aimed at immigrants) whose slogan seems to me to be the very denial of the duty of asylum: “No Way: you will not make Australia home”.

The rights of man are nothing if he is not a citizen. Or at least, they are very little if he is not the holder of the passport of a state that matters

Charles Péguy, the French philosopher, reminded us that this minimal moral ideal, that of a *city without exile*, is a moral duty that falls to all of us: to build a society in which no one must live deprived of the recognition of the status as a rights-bearing subject, which is the

status of the political being, who, as a citizen, enjoys the protection of the law provided by the states. Refugees are radically vulnerable people because they are human beings with no other attributes, deprived of political status, of belonging, of the title of citizens of a state, without which those human rights proclaimed universal in 1789 are not worth the paper they are written on. Because the rights of man are nothing if he is not a citizen. Or at least, they are very little if he is not the holder of the passport of a state that matters.

We are not, nor will we be, a decent society as long as we are unaware that this status is incompatible with our indifference to the reality that affects refugees, the radical abandonment that is the consequence of omission (or worse, rejection) of the duty of public powers, of the institutions of our states. These states, which should guarantee asylum, actively deny or omit it. Duty links us all, civil society, each and every. It is also necessary to point out our duty to demand that public powers assume that responsibility to protect. And, therefore, we have to be consistent and not give our vote to any political party that does not clearly and specifically include in its manifesto that duty to adequately protect refugees, which demands putting the right to asylum within their reach and making it accessible to them.