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THE DETERRITORIALIZATION OF HUMAN RIGHTS

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Abstract: The jurisdiction of Human Rights finds itself in a paradoxical situation for, on the one hand, these rights are affirmed as universal and, on the other, they emerged from within the boundaries of certain determinate states. That is why Western modernity is marked by a tension between the primary, determined territory proper to the emergence of human right and their universal, world calling. With regard to this tension the present study focuses on several key issues in our times: the deterritorialization of human rights and their progressive personalization; the redefinition of public space as the very interiorization of this deterritorialization; the “export” of certain national interests through manu military deterritorialization of the human rights but also of terrorism which, as the author of the present study argues, is actually the universalization of both terrorism and of its reverse – the creation of military bases “outside” any national jurisdiction.

Key words: human rights, jurisdiction, deterritorialization, state of exception, public space, democracy, cultural diversity

International politics and the territory of fundamental rights

“Europe and human rights” – here is a syntagm on the verge of synonymy. Europe – the continent of modern revolutions, the topos of a new form of citizenship;¹ human rights – the same continent’s espousal of what traditional wisdom once referred to as *homo universalis*.² Notwithstanding all these, a certain – more or less explicit – tension operating between, on the one hand, the determinate territory of fundamental rights (which was initially confined to only several western nations), and, on the other hand, their universal, hence world, validity (aiming at a transnational political and juridical vocation) has been noticeable from the very beginning. More precisely, we are dealing here with a sort of conceptual chiasm between law itself – which, in order to be universally legitimate, must aspire towards universality – and its initial territoriality (*i.e.* jurisdiction) – which has been restricted to only a few states. This is a genuine challenge that is still impelling modern nations to “project” this new form of legitimacy (which, once again, is universal and, geopolitically, global) beyond their own frontiers.

We might therefore say that the universalization of human rights implicitly presupposes their own deterritorialization,³ that there is a certain dialectics (chiasmatic, again) “regulating” – in a rather paradoxical manner – the relations between fundamental rights and “their” primary territory:

- thesis – the law always emanates from a particular territory
- antithesis – the same law (which is meant to be universal) proves to be “indeterminate” as far as its initial territory is concerned
- synthesis – the return (conversion), as effectiveness, of the same “indeterminate” (because universal) law implies going beyond, transgressing its primary territory.

It goes without saying that this dialectical inference does not cancel the jurisdictional effectiveness inherent in fundamental rights. It is simply meant to highlight the fact that the jurisdiction of these rights entails – by its very operating modality – a second (symbolical) “territory”: this is itself universal, a sort of “non-place” which is, “as such”, invested (again symbolically) with the quality of being “improper” to any primary territory through the very operation of universalization, and hence globalisation, of the law itself. The return of modern law, which has thus been “deterritorialized,” involves, therefore, a “reterritorialization” (of this very “indeterminate”) which overrides the “purity” of the juridical domain, so as to integrate thus the political. In that sense, any statement bearing on human rights must be “universal.” “Cosmo-politism” and “fraternity” engage here – as the subject of law – a veritable “citizen of the universe,” a “universalized” subject, that is. The (not always conscious)

project of modernity turns out to be no less paradoxical: it demands, indeed, that the possible – the universal – become... concrete.⁴

The “export” of fundamental rights

The internationalisation of fundamental rights is, unfortunately, oftentimes perceived – particularly in the third world – in its inauthentic, hence superficial, form, as the “export” – i.e. “extra-territorialisation” – of certain pretended “rights,” which are actually reduced to the mere status of merchandise.⁵ Human rights are insistently exported – in batches, in a more or less peaceful manner – and are accompanied by, almost fatalistically, the (rather... determinate) interests of certain exceptional nations, which claim to be “more universal” than others. This is how universality converts – or, rather, perverts – itself into “exceptionality,” while the universal becomes an “exception”: a perpetually... determinate “exception.” For what other kind of “exception” are we dealing with here, if its jurisdiction is always mistaken for a determinate territory – albeit that of the world’s “policeman,” for example?

As we have already seen, the dialectic return to the territory, in its second quality, as the effect of a compulsory passage through law, entails a reversal of the purely land-related meaning of the primary territory. Let us remember how the pre-modern subject – the subject of local land-owning powers, a prisoner on a baron’s territory – found himself, at a turning point in history, trans-formed into a modern citizen, free of any territorial constraint. “Trans-formed,” rather than simply “re-formed,” because this is not merely a matter of replacing one form with another but of assuming (internalising) – as far as possible – the very formless source (in the sense of its lying “beyond” any form) which is appropriate for authentic change.⁶ This entails that – externally – the subject sets out for a “new world”, for a sort of “non-place” (*terra incognita*) which already resides within himself as well as at the core of his city. The centre that marks the Place de la Concorde is henceforth to bear the footprint of the ... stranger. For concord presupposes, once again, the internalisation of the other. Let us also remember that the centre of any settlement – the *agora* – is never inhabited; like any other road, for that matter, it remains a sort of *terra incognita* of the encounters with the stranger, with the nomad, with the one who always changes his “place.”⁷ The centre is, so to say, a sort of road turned unto itself, a *sui generis* roundabout. We cannot “remain” in the street unless we keep on moving, unless we change our territory: “Keep moving, keep moving!”, “Deterritorialize yourselves!” Only under such circumstances can the *agora* represent a truly public space (everyone’s and, especially, no one’s place, in the primary sense). It makes ideas and, above all, their representatives move about – *kata-agorein*, from which *katêgorein* is derived, meaning “to interpellate in a congregation.” That which for all of us was initially (in a primary manner) unusual

(strange) because it was extrinsic (foreign) to the city is now internalized (in a second manner s our own centre and therefore, since we are citizens, also as the centre of our own city.

In principle, the modern citizen hosts within himself (internalises) any other citizen of the world, that is the “altogether different other” turned into a “fellow being.” The true fellow being is exactly the “stranger’s stranger,” the improper turned proper (in a second manner). When two strangers meet with one another they recognise themselves as being “the same.” Only thus do they universalize themselves as the “stranger’s stranger.” The same, Hegel warned us, is that which is different from the different (the exception turned into a rule).⁸ Consequently, there will always be a tension operating between the territory of origin – the primary place – of fundamental rights and their own (initial) jurisdiction, since this “territory” will aim towards its own transgression, towards its own otherness.⁹ That which “returns” from this double negation as the “second” territory will thus be reinvested through a political power, thanks to this very passage of the primary territory through the universality of law. In that sense, law itself must pass through this repression, through a “double negation” or, as it were, through a de-negation whose main consequence is the transgression of any (primary) territorial determination, be it a “national” one. The issue of human rights pertains thus to a genuinely political issue; more precisely, to the sphere of international politics, since the “nation” in question is on the verge of becoming “universalized.” What universal declarations of fundamental rights claim is never a particular majority or a particular territory, but this “rational” universality, which is de-territorialized, hence international. No “subject” of international law – be it an almighty state, for instance – which invokes the enforcement of human rights in a third region of the world (not to say, more directly, the third world) can ever claim that its “primary” territorial position (from a geopolitical point of view) is an “exception” to the international jurisdiction proper to these rights.¹⁰ We cannot apply two different juridical measures: one for the interior – “We are the cradle of fundamental rights” – and the other one for the exterior – “We have well-defined strategic interests.”

The universality of human rights and their historical movement should not return (from this dialectical process) as primary – not to say “primitive”, “of exception” or, worse, “exceptional” – territorial jurisdiction because, once again, the human universal cannot be reduced to an ordinary determination, be it even “exceptional.” It is not an “exceptional” (determinate) singular; on the contrary. Its “exception” resides, practically, in this very “particularity”: that of no longer having any determination.

Primary deterritorialization and terrorism

We have all noticed how the authentic deterritorialization of law – through universalization (i.e. through the inclusion of the other) – has been perverted into a mere “export” or, more precisely, into an expulsion of the other, who has been redefined as a “foreign body.” “The Aliens” – this is what the suspects of terrorist acts were referred to as in the famous *Patriotic Act* decreed by the President of the United States two days after the attacks from September 11, 2001. *The military order* instated then – which, juridically, resonates (not at all fortuitously) with the state of ... exception – would trigger a genuine change of the manner – itself “exceptional” – in which certain just as “exceptional” states chose to “relate” themselves to the fundamental rights. It was an upheaval, or rather, a juridical and political hijacking (from the point of view of international institutions), whose effects remain, for the time being, unpredictable.¹¹ *The detainees* arrested by the United States were ... “deterritorialized” in a “primary” (in fact, primitive) manner rather than in a second manner (through the mediation of the law): they were “exported” (in the physical sense of the word) beyond their own territory, into a sort of *terra incognita*, as “exceptions” that were appropriated (expelled) through this very state of... exception. Also as individuals who were “excepted” from the law. *Vice versa*, the United States also demanded then and still demands the allied states that their soldiers – assumed to have an “international” status (which, in the eyes of Eastern Europe, resembled that of the Soviet soldiers) – should be excepted from their own jurisdiction.¹² Although they are *de jure* inhabitants of a national territory, these soldiers – who are most often already deterritorialized mercenaries – remain juridically indeterminate from the point of view of the allied countries. Like *the detainees*, for that matter, who “live” (if one can say that) in the mirror, without any personal right, totally “nude” in front of so “universal” a “law” (or deterritorialized, in the primary sense of the word) that it remains hovering in the void of its own “indetermination” (more precisely, of its own ineffectiveness), as if it eluded, on principle, any determinate jurisdiction. Primary (primitive) deterritorialization amounts thus to a veritable desertification.

By analogy (in a chiasm, however), the same “universal” indetermination also enthralls the terrorists, whose bombs, exhibiting a special preference for “indeterminate,” that is, public places, trigger veritable earthquakes in the West. They dream of turning all the subjects “of law,” as well as themselves, into *tabula rasa* (that is, into the desert). Suicide is also a sort of primitive “deterritorialization.” Let us therefore hazard an etymology: terror – Lat. *terror* – makes the earth itself – Lat. *terra* – tremble – Lat. *terrere*. This is exactly what the ... terrorists aim at:

“deterritorializing” the earth, together with its subjects of law, in a primary (primitive) manner, namely, through terror. As far as we, Eastern-Europeans are concerned, we might say that we were fully acquainted with this terror under the guise of the “dictatorship of the proletariat”: an exceptional class (as an irony of fate, the modern term “class” derives from the Greek *klesis*, meaning “calling,” “a call,” and, by extension, “church,” *ek-klesia...*). After that we were just as well acquainted with the primitive deterritorialization of the Gulag – a non-place excepted from any kind of jurisdiction, and destined to be the burial ground of millions of subjects. Once again, the repression of that which is juridically and politically inter-dicted – redefined as an inter-subjective dialogue (be it political or not) – always returns (in its primitive version) as territorial inter-diction.

For the Romanians, the opening towards the exterior of the second territory represented by Western Europe only became possible by their internally assuming the community *acquis*. Unfortunately, however, we must acknowledge the fact that in most cases, the European legislation only became “operative” because of the same “state of exception.” Indeed, far from being a real debate theme for parliament members, the community *acquis*, which had been under debate for a long time in the West, was most often reduced to the status of a mere object for the emergency ordinances issued by the Romanian government. As it is well known, such a “shift” of power from the legislature to the executive is exactly what defines the state of exception. This can only indefinitely – albeit “for a good cause” – perpetuate a juridical and political regime of exception, an “exception” that thus risks becoming... the rule. Hence, a certain almost natural complicity that exists in the field of international politics between the former communist countries in Eastern Europe and the United States. Both cases evince a certain political acculturation, as the immediate effect of inauthentic “deterritorialization”: the former, a pre-modern type of acculturation, the latter, a post-modern type.¹³

Fundamental rights and the right to survival

What should be, in this case, the authentic meaning of the “international world,” as a juridical and political concept? Is it just the effect – a pragmatic effect, the Anglophones might say – of a trade, or a compromise, between nations? Should we, perhaps, reduce the fundamental rights to the mere status of common law, redefined as a juridical “average” which the states – be they pre-modern or post-modern – will have to accept and then enforce as the “minimum” that is necessary for the survival of the human race? Can our lives be reduced to mere survival? Is the universality of human rights a sort of “minimum” meant to define a sort of *sui generis* communitarianism? How are we then to define man (in fact, the human *person*) as the subject of international law?

For if, say, to give just some examples, we were to reduce his juridical status merely to the rights of refugees (deterritorialized subjects by “explosion”), or to the rights of detainees (deterritorialized subjects by “implosion”), or those of newborn babies (who have no territory as yet) or of dying people (who no longer have a territory), then these rights would be reduced to ... a “natural” right: the right to live a “nude,” primitive life, without juridical and political status.¹⁴ The truth of the matter is, however, that for several millennia man has defined himself not through his nature, but through his culture, through a second nature, that is. Moreover, nature exists for man only insofar as he himself is no longer part of it.

It would therefore be rather outlandish to imagine our future as humans starting from a regression to the ... pre-human beginnings of our own humanity. “Nude” life is not “pure” life. In fact, it is life that is voided of any human determination. “Nudity” pertains here to regression. If post-modern art takes its inspiration from primitive art, that does not make it less post-modern. The modern myth of the “primitive,” which had animated the avant-gardes at the beginning of the twentieth century, has meaning only for us, the moderns. Black art has entered the museums, while the blacks themselves have entered the *banlieues*... As we have already seen, deterritorialization actually has two different, even opposite meanings. This theoretical and practical ambiguity derives from the very (logical) capacity of syllogisms to work either with singular terms or, on the contrary, with universal terms. What is more, an authentic (second) deterritorialization would demand that its “terms” be concrete universals... Even if we were to accept (in the case of exceptional situations) a minimal – not to say, more accurately perhaps, animal – juridical and political status for the human person, the return to the (primary) territory – to a foreign land (that of the metropolis), for instance – through this primitive “right” would have nothing in common with modern deterritorialization and, consequently, with the (second) political reterritorialization which is freely assumed by any citizen. In this case, the individual in question would only restore his old (primitive) primary territory within the metropolis itself: pre-modern refugees – to stick to this example – usually organise themselves after the traditional “rigours” of “extra-territorial” enclaves: at the margins of the big post-modern cities, where they carry on with their ... pre-modern lives. This is what, to some extent, also happened to the Romanian peasants, who had been deterritorialized in a primitive manner by the communist regime, which aimed to turn them, within the span of one generation, hopefully, into city workers. They would, however, carry on cultivating vegetables on the plots of land between the blocks of flats they lived in. If we are to prepare an international world in which fundamental rights will play a determining role, we must, above all, consider granting an international juridical status to the human person.

A “minority” people

To our knowledge, the only second territory where fundamental rights enjoy transnational juridical effectiveness is Europe, with its Court of Human Rights. As far as Romanians are concerned, the consequences of accession for these new members of this non-communitarianist Community were, at least in this respect, immediate: hundreds of individual petitions were addressed to this high court... Romanians benefit now from inter-national juridical assistance for regulating their intra-national problems. Here is, then, an effective way of deterritorializing a national problem in order to find an inter-national solution for it in a second manner: namely, through a detour at the European Court of Human Rights. This is only one of the major effects of this deterritorialization through the universalization of fundamental rights. This is obviously not a matter of international interference in a country's internal affairs, since the country in question has of its own accord embarked on a route of universalizing its own citizens. None of this would, of course, be possible, without transforming the human person into a subject of international law. Ultimately, the intra-national always highlights – on a smaller scale – a sort of “inter”: it operates, in fact, between citizens, or between citizens and institutions (themselves mere inter-mediaries between citizens, or between groups of citizens). No group and no minority has the right to reduce the return of fundamental rights as second territorialisation to a simple autonomy or, worse, to a simple primitive (because violent) territorial secession.

In fact, inside any minority there is always another minority. Conversely, any minority is, in fact, a smaller “majority.” By way of analogy, we shall not be able to grant a second territory to – generally pre-modern – juridical and political cultures, whose essential values go against the process of universalization.¹⁵ We cannot, in the name of human rights or cultural diversity, create pre-modern – or, worse, anti-modern – “islands” in the middle of our societies. As diverse as they may be, these cultures will all have to prove first their own vocation for the universal. In other words, they will have to demonstrate that – above all else – it is *inside* themselves that fundamental rights are respected. Otherwise, we shall be the witnesses not only of a theoretical and practical perversion of the human rights, but also of these pre- or anti-modern nations “arming” themselves with the advanced means (military, as well) of modern or post-modern cultures. Children ought not to play with fire. Although fundamental rights have remained and will always remain a perfectible juridical and political ideal, this does not mean that the national or international actors who have embarked upon this path of modernisation will cease to continuously universalize their own interests or their own citizens. Only the paths differ; the ideal does not.¹⁶ It is not the exclusive difference that leads to the universal; on the contrary, if authentic, the

universal is given to us in different manners. We do not have access to the universal unless we are creative. To paraphrase Merleau-Ponty: creation is what the universal demands of us in order for us to measure up to it.¹⁷ Tolerance is only genuine for he who genuinely looks for *this* universal. To put it differently, without an “inter” already acting at the national level (whether it be a public space or a civil society), there is no inter-national truth, in a sense that would be appropriate for human rights. The intra-national ought, therefore, to function as an “inter” before the international law of the person can overcome the status of mere juridical “trade” between nations.

The international world was constituted and is still being constituted thanks to the opening of a few western nations towards the universal. If the people – the democracy-supporting *demos* – comprises only citizens who are committed to universalization, then (in the case of Romania, at least) it represents only a ... minority, for now. It is this minority, however, that truly thinks of Europe and of its fundamental rights.

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Notes:

¹ The modern concept of citizenship entails overriding all the other types of pre-modern citizenship, whose limitations derive from their being appropriated by a particular economic, political or social group.

² By way of paradox, the universality of the modern concept of citizen derives from its “indetermination” or, rather, from its own divestment of any particular determination.

³ This deterritorialization is not reducible, as one might generally assume, to a mere (because simply mechanical) “territorial expansion.” It represents, rather, the effect of

reprojecting into the “real” of a second “territory” pertaining to the modern rule of law, which has already emancipated man (the “universal” citizen) from his own determinations (of sex, religion, profession, etc.).

⁴ In modern philosophy, the concept of the concrete universal was developed by G. W. F. Hegel (see especially *The Science of Logic*, part III, “Subjective Logic”). The human subject – redefined as self-consciousness – does not cease to be concrete, although he partakes of the universality he himself embodies. For the Hegelian problem of the “embodiment” of the universal as the second, concrete universal, see also the chapter entitled “The Revealed Religion” from *Phenomenology of Spirit*, where Hegel draws a difference between the simple manifestation of the universal through the individual and its concrete revelation as the concrete universal.

⁵ By this we do not mean that the process of colonisation was a “good thing”; we are simply pointing out that globalisation is not reducible to the dominating imperialism of the great western nations.

⁶ The reform of a traditionalist society is not reduced to a mere imitation of new forms – however “modern” they may be – unless these forms are creatively internalised (in their own potentiality). This entails the arrival of an exceptional historical moment – that of the passage between one determinate form and another determinate form – which are consumed at their “a-morphous” (that is formless) and, in a certain sense, “an-historical” point of conversion.

⁷ For more details on the (a-dimensional and, yet “concrete”) topological meaning of the *agora*, see also Virgil Cîmoș, *Être(s) de passage*, Bucharest: Zeta Books, 2008, chapter 4.1.

⁸ Cf. *Phenomenology of Spirit*, chapter III, “Force and Intellect.”

⁹ This is not a “reconstruction” of the other starting from my own “primordial sphere,” as it happens in Edmund Husserl’s *Fifth Cartesian Meditation*. The “Self” of intersubjectivity no longer belongs to me simply because it pertains to its own interval (a-subjective or, if you wish, anonymous), which is itself redefined as a free (second) space, appropriate for a *sui generis* game, be it, for instance, the game proper to the political “space.”

¹⁰ Human rights consequently rely on international law and, especially, on an international authority that will guarantee and enforce them. The concrete universal, which is each and every citizen, is thus universalised (i.e. globalised) thanks to the international law of the person.

¹¹ On the perils aroused by the state of exception insofar as personal rights and freedoms are concerned, see Giorgio Agamben, *État d’exception*, “Homo sacer,” Paris: Seuil, 2003, 10–17.

¹² Cf., also, Virgil Cîmoș, *Être(s) de passage*, chapter 2.3. In fact, the state of exception may designate, above all, two different things: first, a state “without [determinate] principle,” free from any constitutional legitimacy and, yet, the source of any constitution; second, a state that is only apparently “without [determinate] principle,” which camouflages, in actual fact, very well-determined political interests... The former state of exception can further on be reduced to the primitive “principles” of sheer survival for some a-political individuals, gregarious subjects of *sui generis* bio-power.

¹³ We must insist on the essential difference between the two forms of acculturation. Certain western politologists have confused them, invoking a certain post-modern hermeneutics – of the “simultaneity” of values; this is utterly inadequate to the pre-modern realities, for which the second diversity of values is practically synonymous with blasphemy.

¹⁴ There will always be a strong temptation to convert the state of exception into a *sui generis* bio-politics, for the indetermination of (free) political space may simultaneously designate either a total absence of the state of law (which would correspond to a “nude” life, without any political status) or, on the contrary, the surpassing (and preservation) of any right engendered by the free play of the laws, and defined through permanent legislative creation and recreation.

¹⁵ We are faced with a perverse effect proper to a misunderstood post-modern attitude, which is politically correct but which ignores the difference between pre- and post-modernity. Collective rights may oftentimes foster an anti-modern attitude, which turns against the very political power that has enacted them.

¹⁶ We are using the term “ideal” in the sense already defined by Immanuel Kant in his *Critique of Pure Reason*, more precisely in the chapter on the “Transcendental Architectonic.” The transcendental idea (for instance, that of human rights) is unique, while its schematisations are multiple.

¹⁷ M. Merleau-Ponty, *Le visible et l'invisible*, Paris: Gallimard, 1965, 250-251.