ABOUT HERMENEUTICS OF THE JURIDICAL TEMPORALITY

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Abstract

Hermeneutics of juridical temporality compares itself to this complexity that has always characterized studies when they are to deal with the relationship between time and right. Central issue affecting the peculiarities of the juridical, the existence and the formation of political institutions in which the communities live. Through the paradigm of temporality, then you can discuss not only the inner world of man, but it seems credible to pursue a way to draw the necessary hermeneutic profiles about the relationship between right and time.

Key words: *time, philosophy, right, law, conscience, dialogue, human rights, person, values, society*

1. PHILOSOPHY OF TIME

What is the meaning of *time*? Since ancient age, the most spontaneous consideration resulted in relating *time* to other conceptual profiles, in order to define it in a more understandable way, to prevent the fugacity that has always characterized. Therefore, circular time, movement time, moving image of eternity, the perceived need to 'reduce', to make it understandable, perhaps to dominate not to be dominated by anguish of his unavoidable sliding. But it was not enough. The 'measurement' of the *time* could not be contained in the amount, but felt by the conscience through the coordinating action of memory (Aristotle, *Physica*, II, 219b 33-34) defines *time* as 'time structure of the soul'. Do not rely on nature, on cyclical character of things which return, on a movement that stops the man waiting for a time that you recognize the moments, it means moving from the safety of something that finishes to the uncertainty of individual responsibility. From circular time to linear time. Time parts do not reunite in harmony circle but they impose on individual perceptions of person. The man regains his existential sense but at the same way he fears his meaning. Thinking about time as a divine creature, standing in the way of truth and grace, this involves finding an ontological level where man discovers the terms of his being in the duration of his existence (Agostino, *Le Confessioni*, XI, 28). But the unquenchable need for security, on the one hand, and the rising willingness of appropriating again of own identity, from the other hand, lead the man to a state of anxiety that is overcome only with the assertion of the responsibility of each individual before a world built in his own image. The rebirth of the man, the constant and unfailing practice of faith in the advancement of thought, make the universe 'on this side of heaven' observable in its entirety. Time becomes measurable like everything else in nature. But how do you measure the time? Through the abstractions of the mind. The time of pure knowledge takes on its connotation of gnosis, losing all contact with the *pathos* of conscience. If time coincides perfectly with the mind, the man knows the beginning and the end. In this direction, the *temporalization* of the reason resolves upon doing as soon as the space of time is marked by the mind, by nature or by a simple clock (Elias, 1986, p. 128; Pomian, 1984, p. 311). Between the nineteenth and twentieth century the *time* necessarily becomes mechanical. It undergoes an acceleration never previously seen. There is no time if not related to the new speed divinity, daughter of energy trapped by men, by now 'novel Prometheus'. Physics understands that also the *time* requires its own space. The dimension of the space and the time makes absolute the thought. Everything becomes the object of science. So much as Bergson takes refuge in the duration just about to guard against determination of science, but weakly. The duration is as pure as science and does not redeem the conscience retreated in a corner of the past (Mathieu, 1971, p. 60). By phenomenology the *time* returns to the center of philosophy releasing it from point of view of science. Husserl believes that time and conscience are inextricably connected. By means of memory the time of life is prolonged in the time of the world. According to Heidegger's way of thinking the phenomenological analysis meets existential themes. *Dasein*, radically constituted by temporality, is located in the world with its body that demands 'care', especially with its language and its history (Heidegger, 1997, p. 490; 1998, p. 27). *Time of gnosis* and

time of pathos get together and move away over the centuries, depending on the ability of men to show instances of social participation, to reflect one more time on the sense, to understand the laws of the world. In conclusion, behind the time of *gnosis* and the time of *pathos*, the ego of gnosis and the ego of pathos personify, in the continuing search for a balance between knowledge and conscience.

1.1. Consideration about philosophy of time in the twentieth century in Italy

On the one hand the tension of everyday life is measured by the 'clocks' in a sort of dependence on the measurement of time (chronodependence), on the other hand subjectively the man gets in front of the passing of time while accepts the registration understood as 'social' established development. On the one hand, the emergence of a vision of a 'lived time' that refers to the profiles of conscience of a philosophy, on the other the highly desirable approach for a 'time measurement' which asks the quantitative science to be an interpreter of whole reality. Today more than ever, for the great changes in the global world, it is necessary interrogating the classics from Plato and Aristotle to Augustine and Thomas, from Descartes and Newton to Kant and Hegel, from Bergson to Husserl and Heidegger, that are invaluable 'deposit of ideas' for understanding the changing dimensions of time and space in front of the eyes of the helpless individual person, who feels anguish for his own destiny. During the research, the picture begins to take shape and assumes a constant and explicit differentiation between the arising of a vision of time in relation to the conscience and the proposition of a time tied to measurements of science. A time for conscience and a time for knowledge. A time of *phatos* and a time of gnosis. The great philosophical heritage of temporality that over the centuries, as we have seen, marked the whole story of human thought, can be considered a path through which a *gemmation* blossoms affecting no doubt the different strands of the philosophical speculation of the twentieth century in Italy. So the theory of temporality plays a significant role in order to consider the aspects of the human condition, especially the question of *finitude*, beloved from Italian existentialists. Without doubt, as Eugenio Garin writes (1996, pp. 3-31), the hegemony in Italy in the early twentieth century belonged to Benedetto Croce. Croce directs the discussion in the idealistic way, about historicist profile. The trend of existentialism with intellectual as Abbagnano thinkers like, puts temporality at the heart of its reflection. It's essential to define the contours of the speculation in the reconstruction of the relationship among law, time and conscience. The reflection about the concept of *time* concerns the different fields of thought through which the Italian philosophical story has developed in the twentieth century, starting from the neo-idealism. Croce thinks that the reality is 'historic reality' and historiography is the expression of thought in front of the reality, so history has got a totalizing character and is conceived as a judgment that is knowledge. History is always *contemporary history* and historic judgment is authentic knowledge in the sign of a radical convergence between history and philosophy (Croce, 1971, pp. 184-193; id., 1973, pp. 19-25). The dimension of the past acquires meaning only as it forms us, and turn it into knowledge. It is evident the 'primacy of history'. "Philosophy and history are not already two forms, but rather a single form, and do not affect each other, but actually identify themselves [...]. And, if you want to give to philosophy any precedence or primacy, it can only be in the sense that the only form, the philosophy-history takes its character, and therefore deserves to remove the name, not from intuition but from what transfigures intuition: from thought and philosophy" (Id. pp. 184-193). The specificity of absolute historicism of Croce, which is expressed in very different tone from German historicism of Dilthey (Rossi, 1960, p. 291), is the time dimension of past, such as timeless deployment of the absolute leading 'ideal premise' of 'new life'. The contemporary history concerns a close past, however, a past. The relationship between thought and temporality, in that sense, is determined in terms of the reduction of the history to Eternal. "To historicism every reality is history [...]. There is no time like the dominion of individual, of contingency, of arbitrary" (Abbagnano, 1999, p. 125). The 'action of making' of the individual, for that matter, in his 'limited' in the work of the Spirit, becomes semblance of time. If we look at another Italian master of idealism, on the side of Actualism, Giovanni Gentile, he defines space and time as "systems of many-sided (multiplicity)" and, proposing a deep reflection of ideas, outlines the directions on the ontological plane and structural. The space must be understood as absolute and positive multiplicity. In fact, positivity wants multiplicity; but this is not absolute, whole multiplicity, until it is meant only as *space dimension* (Gentile, 1975, pp. 183-193). This requires the necessary

directionality in the joint that makes the "point" the central element of the construction: "each point in space is the center, where you can fix the system of all the others, and then destroys the multiplicity: the point as this is the limit of the space, and therefore escapes the spatiality. But for the same reason that the extended splits into its elements, and the unity of everything is reduced to multiplicity, such as the point, limiting the space and then canceling it, is not conceivable without further multiplication, that it will be a new *space dimension*" (Gentile, 1991, p. 554). While there is a point among the points and this is the *point of multiplicity* which gives rise to space, on the other hand there is the *point of unity*, that "you cannot fix in his unit without dropping into nothingness the multiplicity that it depends on it. Time is understood as "development space" as *dimension of unity of the space*. "The space is accomplished in time to present itself as absolute multiplicity, each element of which is itself a multiplicity" (Ibid., p. 555). The connection of space and time is obtained from overcoming of the unidirectional interpretation of the reversion of the space in time beyond the affirmation of a multiplicity that is either space or time, therefore "not unified". "Time and space can be schematically represented as two intersecting lines having in common only one point: that point in space, and in space cannot be a point (one point) without being one of the infinite points of time. [...] It should rather present what has been warned of the plurality of spatial points among which you take unity that multiplies over time. [...] And then you will recognize, that point in space there is no other spatial that time" (Ibid.). The overcoming of the space-time reversion, in a unidirectional way through the determination of a *schematism* that describes the transition of the multiplicity both of space into the time, and of the time into the space is felt even more when "the *coexistence* of spatial elements makes perfect abutment the *presence* of the elements of the time; and the presence of these implies in its exact meaning the coexistence of those. [...] The space and time do not conceive of themselves properly when you take as existing in their pure and abstract multiplicity, motionless and irreducible. Their multiplicity is real however, but as put, in mobility, in life, in the same dialectic of the current position that makes the spirit realizing in its unity" (Ibid. p .563- 564).

1.2. Perspective of hermeneutics of temporality

The problem of temporality is one of the determining interpretations to penetrate the constituent moments of the philosophy of existence, which in its present itself as an alternative to the domination of idealism, gave new impetus to the development of new levels of reflection on the issues so far discussed. Among the most important exponents of Italian existentialism, Nicola Abbagnano, in his philosophy, investigates the relationship between temporality and finitude about human being, "because temporality means finitude. It is the time that keeps man in his finitude (Abbagnano, pp. 33, 66). But the condition of finitude doesn't mark the irreversible destiny of man 'who lives in time', unable to escape from it. "Man in his constitutive limitation, the man who can fall in appearance or in error but feels the need to reconnect to the truth and the eternal and track them down and make them with his research. The man who tries to understand the history and realized in it, just the man in his historicity, he was excluded from history from historicism" (Ibid., p. 129). In this perspective, the trace of temporality, dictated from Italian existentialism, leads to the emptying of historicism and the appreciation of the historicity which raises man from 'anguish' of existential temporality (Garin, pp. 473-474). Enzo Paci shares these positions. He confirms that the time is outlined as a constitutive principle of existence, it enhances the value of it, in so far as it is not limited to the dimension of the exterior and linear temporality but finds itself in the freedom of the inner time sphere. The inner time as authentic time, for the new understanding of the time dimensions in their entirety, in the recovery of the past through the liberating choice of the future (Paci, 1959, pp.15-17). History 'presents' itself as the 'where' the man doesn't deny his own temporality, but says the relentless ethical tension towards the eternal, as Luigi Pareyson says (1950, p. 29), in the name of research and in the symbol of the mission in walking the path towards the established dimensions of human communities. And in this dimension that the connection between time and interpretation was conceived in the wake of the relationship between language and temporality. The time of the 'existence' needs a hermeneutic engagement, when, in the understanding of time dimensions, "the past can only be known as another, just as the past, and as such remains as a virtual way for that now springs from: the intelligence of what we are may only turn to this root and interrogate it at the point where we feel there constituted"

(Melchiorre, p. 248), as it is unthinkable the request without the word. "The word contains the secret of the memory, for which the past that evokes is never closed and defined in itself, but it remains to interrogate and interpret again and again, in relation to how much of it still remains to understand and therefore must still to come" (Ruggenini, p. 22). The time of existence, therefore, is between the interpretation as method and the language as instrument of liberation on the path of the future dimension. But, "from the future, time gives space to another without excluding. And it matures in it and implements the space of the relation. Time is founded in the event, in the advent of the opening" (Samonà, p. 47) which means the destination of otherness in a world that feels itself through a language of justice. But if the temporality becomes the center of human languages, it becomes the preserve of the juridical communication. Both in the classical tradition of the early twentieth century and in the heirs of that tradition, philosophers of law will check with their elaboration, that philosophy that deals with the things of the law is philosophy *tout-court*.

2. RIGHT INTO TIME

Hermeneutics of juridical temporality compares itself to this complexity that has always characterized studies when they are to deal with the relationship between time and right. Central issue affecting the peculiarities of the juridical, the existence and the formation of political institutions in which the communities live. Through the paradigm of temporality, then you can discuss not only the inner world of man, but it seems credible to pursue a way to draw the necessary hermeneutic profiles about the relationship between right-time, the central theme of philosophical and juridical tradition, especially Italian way. If the positive juridical thought uses the instruments of the juridical temporality for the operation of its institutes (time in to right), on the other hand the prospect of right into time expresses the deepest authenticity in the consciousness dimension where the law unfolds across the cultural value of which it is bearer. In the twentieth century you can be identified first in philosophical cultures in Italy, the legacy of the great tradition of the philosophies of the time and then through the recovery of the phenomenological speculation of Gerhart Husserl, to whom we owe the striking phenomenological elaborations about figures of the judge and the process comparison with the time dimensions. Investigating the process as 'third time' in Gerhart Husserl (1998, p. 15) means looking for openings for which you can call for further considerations and reflections. In the juridical philosophy of the German thinker there are compelling similarities with Heidegger, on the basis of a renewed adherence to the existential phenomenology. On this side, it should be plumbed the entire Italian family of the philosophers of law after *Recht und Zeit* in the 1955. The interpretation of Bagolini, Cotta, Opocher recognizes distinction between 'lived time' and 'objectified time'. The world of law expresses the tension of which is a bearer in relation to the theme of justice, in comparison with the values, in the wake of existence. The juridical temporality assumes, through the words of involved thinkers, an anthropological aspect as it questions the contemporary world, the signs and languages. Through the paradigm of temporality, the first issues of juridical knowledge are designed. Juridical knowledge is realized in the foundation of the institutions, of society, of communities under a very complex and layered globalism. It is not enough to analyze the present with the only time categories but it seems necessary input the data space, combining it at the time level. The political institutions, in *governance* time, are *without space* and *without time*. The political body loses its prerogatives and renewed itself in economic corporation, changing the balance on which national and international institutions had been built. Law as a cultural product, both on the epistemological level but also on methodology, follows the Occidental currents of thought. Undoubtedly in the relationship between law and time, understanding of temporality under the philosophical profile has had, and still it has, a great effect. The juridical universe, in the interpretations of temporality of *pathos*, is defined as the space of the *feel-with*, origin of any inter-subjective doctrine. Memory, conscience, experience, justice, come into play through hermeneutics of temporality of *pathos*, to the extent that law not only limits itself to be normative date. The existential sense of the juridical cannot be calculated because the *plus* of sense that it expresses, may be included in the depths of its consolidation. Certainly the juridical practice is made of techniques and it would be unthinkable to disregard it. But the juridical knowledge look at the general, the man without a face. The 'who' of the relationship gets lost in the flow of abstract, pure, *a*-subjective time of *gnosis*. Italian philosophy of law, in the postwar period of the last century, has given

a lot to this point. The context of the 'second life' of the institutions. The existence of man before the temporality is completed in co-existing through the *medium* of law. Bagolini, Opocher, Cotta, not surprisingly all deeply religious, in discussing about juridical universe, differentiate the time-measure from the time of conscience, through their own philosophical system (Di Santo, 2012, pp. 103-114). They recall the great thinkers of temporality, from Augustine to Bergson until Husserl and Heidegger in a kind of never broken wire, where the law and its philosophers aspire to think about the vision of a temporality of *pathos* against the dangers of *scientistic* formulation of the normative, intended to occupy a functional space to the technique and the increasingly pervasive market. Right into time and time into right are sides co-essential. The philosopher and jurist wonder about this relationship to rediscover the meaning of law into the life and the rule of life into the law. The times dimensions of law, as Gerhart Husserl says, mark the moments of juridical practice since the time sensitivity of law is reflected in the conscience of every man and it directs its making. This applies even more so for men instead the juridical making. In the process, the great Italian philosopher Capograssi reminds us, the judge responds to his own conscience by *sententia animi* of which he is bearer. And it is in the space-time dimension of the process that you encounter time of *gnosis* and time of *pathos*. The time of *gnosis* lives in the schemes of possible knowledge of juridical science, of the 'formed shape' of the things of law, the time of *pathos* lives in the conscience of the judge, who makes the process as reign of 'emotional tones' with his creative activity, because, as Punzi writes, "judging is not only decide either to punish but to lead the man - who should judge or should be judged - on the way of the interrogation and the responsibility" (2009, p. 255). The presented thesis seems to be confirmed. The juridical universe, with its being 'different' from morality, from politics, is able to hold together needs of the time of *gnosis* with the possibility of time of *pathos*. But in the global time, the evocative power of law is in crisis. With the winning economics, the making becomes unidirectional and the word becomes monologue. Law cannot be a battle field of synthesis any more. The dichotomy "time of gnosis-time of pathos" returns. The circular temporality of communicating replaces with the linear temporality of consumption. A profit temporality. Consequently, there is law without memory but powered by memories that repeat themselves without the possibility of recovery of the sense. In the globalization, law is found to be a thing among others. The systemic seriality establishes itself in this seriality the person has no place. This also applies to the juridical. In this sense, law refers to the concept of expectation, because the time is at the basis of juridical system construction, since it acts as a sedative of the expectations. The concept of temporality has its significance only as chronological order and certainly not as the sense given to this succession. But if we take the time as *novum*, it escapes the predictability since the time becomes space if it is predictable. Similarly, subjectivity is both instance that predicts and instance that eludes prediction. Law is confronted with this contradiction. On the one hand it should govern the time and the subject, as expected; on the other hand the time and the subject, in their unpredictability, subtract themselves from the prediction. At this point there is the problem of certainty of law as a value which assists the abstract, general and stable norm. Is it possible today in the structural change (I mean structural in the sense of change) of the things an abstract, general and stable norm? The certainty of law is threatened by the fact that new situations arise, unpredictable. I think of bioethics, of all sorts of techniques. I think of the inability of *normative date* of technique or technique that imposes its law. I think of the precautionary principle, as a degree of complexity that goes far beyond the prevention principle enshrining the reversal of the burden of proof. The reflection on the forecast leads us straight to the issues of temporality, to the distinction between objectified time and lived time. The duration that involves the conscience and the flow. In this sense, understanding the dysfunctional tells us how to reflect on the complexity as 'space of cultivation of the culture'. In the outer time, Bergson writes, "there is only one that doesn't last, that is, the space where there are the most simultaneity" (2002, p. 125). While the space is something external to conscience, the duration is identified with the latter; the duration is not measured but perceived, lived at the level of "internal ego, that feels and is passionate, that acts and decides". But as we shall see, the '*meta temporal conscience*' (beyond time) which, with its presence, will size the time and not running any more the risk of getting lost in the flow in which the man would be only a purity without substance. "Lived time" is the time of subjectivity. "Objectified time" is the time of the fourth dimension. The first escapes the *omni* providing *normative date*, because it doesn't objectify. The same subjectivity can be understood as a conscious and objectified. It, as objective, is definable (serial

individual) but in its being *lived* cannot be objectified completely. The uniqueness of the *lived*, on the juridical level, goes in the direction of keep an irrepressible instance, as Radbruch says, of justice which transcend every shape conceptually defined. Subjectivity in addition to the uniqueness needs of the depth in the passage from the individual to the *ego*-person. The depth is the radical complex of possible worlds from which the person emerges in his application of freedom and responsibility. The depth is complex, and in circularity, doesn't see the bottom. But it retains the root, which is back in the encounter with the other, capable of speech in the construction of *inter*-subjective *relationality* of the sphere of *pathos*. The instance of subjectivity can reach the complex to the extent that it is recognized *ego*-person and can rely on law, exceeding the norm, in the perennial search for the right. Rosmini writes: "the person is subsisting law" (1967, p. 191), center of attraction of the rights. The complexity is 'perforated' at the point where the person emerges. The complexity is a 'drilled' complex. From these 'holes' emerges the irreducible dimension of the person. Therefore, the problem is not to simplify the complexity, but to meet it such as an event in which the *encountering* (the person) and *met* (complexity) are both deep in the possibility of a narrative, as Ricoeur says, that has to do with the man and his time in the flesh. The simplification of the complexity takes place into the research of the meaning of coexistence, then, in the activity of interpretation, which in its plurality of possible directions, urges the individual to choose out of the contingency, choosing responsibly the quality of relationship with others and therefore establishing juridical norms measured by justice, which gives meaning to legality. The simple total of operations performed functionally to produce simplification doesn't arise the question of the right or not right. Nihilism finds here a coherent and complete expression in the alternation without sense of the complexity and simplification that consume in no way the man of modern society. In this sense, the person placed into oblivion of nothingness risk first of all the extinction, in the implementation of contingency, alien of the integral dimension of time, as past, present and future. It is necessary to underline the importance of the space of interpersonal relations in the sign of the time entirety from privileging the act of the person as a social act. The person, like the time, is always new and stands before the complexity in an open path of co-orientation and planning, always towards the search, the unpredictable, the host, in the direction of a *plus* of sense of law that is not *omni*-previding norm, but that right which is not "out of us, but in us", as writes Satta (1994, p. 45). The sense of human life exceeds the walking.

3. TIME INTO RIGHT

The words of the philosophers have specified the sense of the relationship that is established among man, his world and temporality. The philosophers, who reflect on the right and then on the human condition, showed the most significant line in the juridical experience to open the discussion towards life not *vitalistic* and not crushed by the *scientistic* technique that are supposed to know everything to the point of denying itself, but that condition which is sublimated in a desire for meaning [that] passes through and qualifies the entire life of every single man and the different forms of co-exist in the institutions. The 'philosophies of the time' feel the need and the purpose of thinking man in the context of the 'second life', that life of the institutions, for a variation of its vitality expressed through doing individually and collectively. A comparison between the right and temporality means putting the right in front of the time but also the time within the right as perspectives that affect the philosophical-juridical thought. If we were to propose anew to go in search of the roots of the relationship between time and right, we could not turn our eyes to classical antiquity. Plato asks what value have, in the persistence and in the changing of laws, customs that are located between the laws already written and those that will be in the future. Aristotle, in *Politics*, questions whether it is appropriate to change existing laws or amend them. He believes that it is "false the example from the arts because it is not the same as changing art and a law: the law has no other form to be obeyed that the costume and this can only be achieved over a long period of time, so going lightly by the laws in force to other new laws mean weakening the force of law" (1993, p. 55). For Aristotle, therefore, the law, even the most innovative, must have an intrinsic ability to turn into costume, into *ethos*; as well as for Plato, although in an ideal context different, even for Aristotle, for which we remember, the time operates on the norm but inside and helps to establish it (Ibid., p. 109). Plato's and Aristotle's reflections about the relationship between the costume and the law would have been taken over by the Roman tradition,

where there were, in a context of unity and distinction, *leges* and *iura*, the rules established by the community through its constitutional bodies and the customary rules. All together they were 'intended' as *mens* (mind) and *anima* (soul) of the city, as a political body (Cicerone, *pro Cluentio* 53, 146-148). Even Justinian codification doesn't exclude the time. "Who takes care of the right is naturally exposed to a twofold danger: of getting carried away by the theory in empty abstractions of an alleged natural law, of being carried away by the practice in a mechanical craft without intelligence and unsatisfactory. Against the one and the other danger Roman law, if we use good, it gives us a safe remedy. It still keeps us on the ground of a living reality; it reconnects our legal thought on the one hand to a glorious past, the other to the legal life of other contemporary nations, with whom we maintain such an advantageous union for both parties" (von Savigny, 1886-1896, pp. 14-15). Savigny underlines the role and value of 'model' of Roman law which connoted essentially as Justinian. The work of medieval commentators had naturally deposited on the Roman law. The new historical law was compared with Justinian texts, and in particular with the Digest, with the tools of a subtle analysis and began to build a picture of Roman law as a great cultural monument (Kelly, 1996, p. 402). If the right 'lives' in the time, if the time is a constitutive feature, understanding the right, for Savigny followers, means to understand it as history. The 'system' can only be found in history, because it is a historical fact, the 'organic connection' among institutions that make it up: "At the jurist it is indispensable a dual slope: the historical one, to seize what is right in every age and of all legal forms, and that systematic one, to observe every concept and every principle in its living bond and reciprocal action with the whole, that is to say in the report that is the only true and natural" (von Savigny, op. cit., p. 99). It was clear the sense of 'juridical phenomenon' resulted from the inherent characteristics of 'relevance' of Roman law which is shown as the 'immutable kernel' of which science uses, in adapting the inert legal form of the past to seething matter of present. In modernity, the generality is the primary determination of the law. It is 'indifferent' in the sense that eliminates the social-historical difference. The law implies the neutralization of the time. The rule is immutable between the issue and the extinction and is looming as 'limit' of historical change. The institute that allows the replacement of the 'juridical' is the repeal. The juridical results in independent forms of the time dimension, while recognizing that the general rule provides the succession of the law in time. The law does not provide that for the future. Basically there is no 'before over afterwards' but only 'afterwards over before' in terms of juridical temporality. The juridical time is the term that measures the amount of necessary and sufficient development for the production of a juridical consequence. Gerhart Husserl speaks of 'objektive Zeit', objective time; "time poles among which there is judicial request are given in objective time. The objective time is measured with meters that neglect that is in the time. [...] The objective time is an empty time. It makes abstraction from what happens in it, and therefore is also an abstract time. To seize it conceptually, man must put away and out of the validity what he experiences from time to time as part of his natural experience" (Husserl, p. 25). He remarks that the "juridical request' exists in objective time having fullness only in the terms 'from-to'. The 'objective time' of Husserl remembers close the '*time of space dimension'* that Bergson criticizes and defines pure artifice - "The time, conceived under the form of an indefinite and homogeneous manner, is not that the ghost of space that besieges the conscience" (Bergson, p. 61) - and of which Bagolini (1975, p. 112) highlights the contradiction in relation to the 'conscience time'.

3.1. Right and time in Gerhart Husserl

The "juridical phenomenon" that was previously recalled is that of the "immutability of norm" or "timelessness" of the right. Gerhart Husserl in his *Recht und Zeit* of 1955 deals with the problem of "immutability" of the norm or "timelessness" of the right about to the Roman law. "The law of the Romans, the laws of the Roman state, could not survive the fall of Rome. However, they were contained in the law of the Romans certain legal principles, certain forms of thought, certain methods of juridical thought, which possessed a radiant power that went far beyond the sphere of influence of the *populus Romanus*. This Roman law continued to exercise its influence in the meaningful form, even long after the Roman community had ceased to exist, and has affected up to the present, on the legal systems of other states and nations" (Husserl, p. 4). In this passage, not only Husserl emphasizes the "goodness" of the principles and technique on which is based Roman law but specifies that "this is

a historic phenomenon that we encounter in almost all areas of human production: the ideas, the evaluation, ways of thinking in a certain cultural sphere are accepted, more or less unchanged form, in other cultural spheres and there develop a constructive force. [...] In the *transplant* of ideas from a vital sphere to another is conceals a 'timelessness process' [*Entzeitung*]" (Ibid., p. 5). In this case the 'transplant' interests law, *Entzeitung* "finds its characteristic expression in the fact that juridical ideas are deprived of the passed forms in which they made themselves known within their juridical scope of origin" (Ibid.). It is therefore proposed a situation that necessarily implies a mutation of sense (Ibid., p. 6). Juridical ideas in their entirety form a plurality, a 'system' of 'nuclei of meaning' reciprocally intertwined from the logical point of view. The *Entzeitung* in fact consist of the reduction of the juridical phenomenon to 'kernel of sense' that constitutes it. Ultimately, the *Entzeitung* implies the reduction of the juridical phenomenon to its 'kernels of sense' that constitute the logical premises of every possible juridical system or the structures of the juridical *apriori*. The reduction defines what is essential in the 'thing', able to resist the flow of time, and this also applies to the right. "The things we're talking about here belong to different categories, of which each has its a *priori*. [...] It is not a juxtaposition of systems delimited in categories but of partial systems, which are connected in a global system of this human community. One of these partial systems is the juridical system" (Ibid., p. 16). If *Entzeitung* promises to be the moment of reduction of the norm to its "kernel of sense", the right for Husserl also appears as *Zeitstruktur*. "The existential root of a rule of law is not necessarily an act of human creation. Only for a fraction the guidelines of human behavior, which are contained in the system of a certain community, can be traced to voluntary acts of creation. [...] It is characteristic of the rules of law, which can be produced by acts of jurisprudence. If a juridical phrase has its existential roots in a concrete act of creation, even in this case we are dealing with the state of affairs of a prehistory, which is attributable to the rule of law created in this way - the law -. The act of the legislation is therefore the final stretch of this prehistory" (Ibid., p. 18-19). Beyond of the 'origin' of this or that norm, "the legislative will [...] finds its condensation in the accomplished work of the law, its expression more or less clear and conclusive. Through its normative content, the law refers to the will of the legislator" (Ibid.). It will make its voice heard on issues related to the interpretation of the law, as it is necessary to go back to the time-historic context. In essence, the climb to the historic context must be considered the first step in the interpretation process. "The further assignment will be, as it were, to remove the law from his relationship with the historic moment in which it arose, and ideally to prolong it until the present. Just so it is established a living relationship with 'today' and its problems" (Ibid.). The rules «go together with time» and are subject to change because no legal system is forever (Ibid.). The research of Husserl on the time structure of the law, as Larenz says, "lead directly to important conclusions for the interpretation and [...] for the methodology. [...] The right (relative) as much as the no-right -both of interpretation only historic (depending on the 'will' of the legislator) and an interpretation oriented exclusively to actuality of understanding- are tagged here properly. The legislator is the creator of the law [...], where he is bound for so-called logical connections as to its concrete historic situation. But the law as part of the legal system takes part in the whole logic of this system and its constant evolution in history" (Larenz, 1966, p. 171). The law is in time, as the unchanging in the changing. The ontology of the rule lies in the close connection to the life of man and is inserted in the real.

3.2. Time dimension of right

In *Recht und Zeit*, furthermore, Gerhart Husserl proposed a reflection about the various ways of prevalence of time forms in a juridical perspective. "A survey dedicated to time issues of law cannot evade the following question: how is experienced - *ratione temporis* - the right by men who have a normal relationship with the juridical issues?" (Husserl, p. 36). The legal practice must be understood in relation to the way in which the time problems of right is reflected in the conscience and in the activities of each man. In particular it should be assessed 'time perspective' from which he sees the reality of the right. Time, for Husserl, is structured in three dimensions, in the forms of the 'past', the 'present', the 'future' as defined dimensions of human experience. In fact, while specifying that among the three dimensions, the 'present' has an absolute primacy, no one can 'define' itself individually. "The past continues to act in the present, and the latter is characterized by the fact of

having a future horizon. In man's life, the past, present and future merge into one large space of experience" (Ibid., p. 37). Human activity is carried out in the sphere of present: the "man of present" is the man of the 'fact', of the making, and proposes a worldview 'close' as well as its space horizon. He has in common with the "man of the future" the 'look ahead' although of different dimension as the latter binds to another time dimension, for which conceives of the 'present' in the sense of becoming, the ability as a fundamental category. The look of "man of the past" is pointed backwards. In his time vision there is a position for which the issues that are on the plane of human reciprocity are framed in thought patterns characterized by 'repeatability' related to the category of need, the need for a finite and limited world. If "the man of the future" puts his conscience in progress, in the 'possible, the "man of the past" acts as an exponent of the tradition, of the 'need'. Husserl sees clearly the limits of the three described conditions. In the case of "man of the present", the danger is detectable in the reduction of life to the speculation of moment; for the "man of the future" there is the risk of the inability to anchor the topicality while for the "man of the past" can appear to be a status of 'liabilities' detrimental to all evolution. The three time 'types' are for Husserl the tendencies to limit immanent the concrete social reality. "With the prospect of these three types Husserl implicitly reaffirms the principle of Bergson: The 'interpenetration' of conscience of time forms. In fact, he says that in every man there are three types. The fact that, for example, through the behavior of an individual, the "man of the present" prevails in him, doesn't exclude that the same individual is also a "man of the past and the future" (Bagolini, p. 117). Husserl affirms that the three 'human types' described belong together and are mutually complementary, but, in a psychological sense, they find their feedback with regard to the modern political and legal experience, in practice and in the doctrine of the *three-part* division of state power (Husserl, p. 47). Husserl speaks of 'general feeling of time' that occurs in a given stage of history, "depending on which time perspective is predominant at that time in thought and action of the man, one of the three above-mentioned figures of public life acquires social importance or be thrown aside" (Ibid., p. 57). In Italian presentation of *Diritto e Tempo* in the 1998, Renato Cristin writes that there are fundamental points in the thought of G. Husserl, such as the need for an 'experience' of the juridical issues, the absence of the judge's prejudices, the necessary 'internal transformation' which implies a process of knowledge, not only juridical, and ultimately the primary position of the subject and his individual experience, compared to the institutional structures. There is a recall of integrality sense of the human experience. The connection between human life and the right, according to Vico's lesson. Phenomenological philosophy cannot take into account the history and its institutions. The thought of Husserl points also to the history, in its search for the essential relationship between subjectivity and temporality.

4. JURIDICAL HERMENEUTICS OF TEMPORALITY IN THE GENESIS OF HUMAN RIGHTS

The historical change and the juridical limit decompose and recompose themselves constantly looking for a dynamic balance as the former doesn't tolerate excess of the juridical limit but cannot do without it. The land on which take shape encounter-clash between the emancipatory action of individuals and the function of recognition of the right, is that of the social reality where the dynamics of the relationship between historical change and juridical limit develops to the perennial search for a balance. The break of the latter determines the degeneration of one as obstacle to the other (Capozzi, 1992 pp. 193-208). When the replacement of the norms, made from juridical institution of the abrogation, fails, "pathologies" arise that indicate the breakage of the balance between the historical change and juridical limit, with severe degenerative consequences for the entire legal system. The failed replacement of the norms, decisive for the presence of the "imbalance" is determined from the insufficiency of the forms of qualification or the ways of legislative regulation. Beyond the aspects "application-normative", the nodal point for the relevance of the question is to find into the time gap between juridical value and social-historical development. The juridical value is timeless as possible on the basis of the historical social development that has temporality as a symbol. The juridical value from the outset of its "force" appears exceeded from uncontrollable historical and social development that with the temporality introduces new "values" as a result of the emancipation of the individual as a person and as a community, which will be recognized from normative system for their protection and

guarantee, in the agreements on the general conditions of programs of common life. In the institution of the communities it takes place a report in which values and models are protagonists. On the one hand, the value affects the model of establishment of the community, the other the model guarantees the progress of the value with the establishment of the community. The "model" function with which is established the community takes on decisive connotations for the defense of the "value" of corruption in the variations of time. The model with which is established a community, on the one hand is a constant in the time variables, the other is subject to time limitations. Although it cannot quantify *apriori* the duration of community models, there is however a parameter no less obvious of prediction of social time, depending on the vitality of the values that are embedded in institutions. The models with which they establish communities, shall lapse upon the exhaustion of the vitality of values. Temporality implies that values arise, are modified and are terminated within the community in ways that bend and reflect on set of social equilibrium. The right, for the purpose that it pursues as a value, implies on the one hand temporality as its property, the other the timelessness as properties of the social-historical discoveries of acting in a tendency to not only balance but also of latent conflict or patent in the right dynamic (Ibid., pp. 200-208). The time gap between juridical value and social-historical development, originates from the fact that although the first meets the requirements of the second, about the "agreement" on the choice of the general conditions for living together in society and among individuals, there is the implication of a "time" that on one hand is crossed by the historical and social development, on the other hand doesn't involve the legal value that is fixed, rigid and firm in its timelessness. This means that at the same time of adaptation of the legal value to the historical and social development, arises already the germ of a "latent conflict". The latent conflict is the phenomenon that occurs in the relationship between legal status and social-historical development on account of the timelessness of one and temporality of the other. Despite the "latency" of the conflict that marks and points in every way the dynamics of the relationship in place, the legal force continues to ensure the social-historical development. But if the time gap increases its reach, going beyond the limits of the latent conflict for the forfeiture of the legal value in legal non-value, the latent conflict turns into conflict patent, by the "declaration" of the crisis of law, which produces negative effects on the social-historical development. The crisis of values is disseminated from the right to the historic order of society in their correlation. The society on the one hand is tied to outdated historic values of its development phase, the other loses the sense of view of its development nor has knowledge of the correlative historic values, as the historic social development is paralyzed and imprisoned by juridical no-value. Historic values dissolve emptying the right that converts them into juridical no-values, resulting in a distortion of the social order. A return to equilibrium of relationship realizes through a renewal of values that starts from society, takes place at the level of the institution through the law that converts the historic and social values in the legal values. Conversely, the Institution with its powers produces changes involving the society by law. But for the "overcoming" of the status quo, the juridical law is not enough. It becomes so internalizing itself in the conscience of individual: the juridical law internalizing itself to the individual conscience is converted into moral law without losing and dispersing its origin of right but conserving in morality in a unity-distinction that is the determination of delineated sense of legality. In this sense the law as *lex in interiore homine* with an identity and identification of right with the moral conscience arises favorable conditions for the establishment and expansion of a human ambient which is conducive to reinstatement of the social order (Capozzi, 1994 pp. 186-190). Conscience acquires an increasingly important role, especially in relationship with temporality. In the temporality is identified the expression of conscience that allows to man to be autonomous but, in the encounter with the right, to assume a condition directed toward the search for justice. About the relationship between temporality and conscience it would be more appropriate to speak of trans-time conscience. We are time, we are made of time, we are in or out at the time, we constitute it. Trans-time conscience, able to establish a structural and functional relationship with the time itself. Why? Because it allows to combine the relationship between the values of time and values into time. Values of time that are contingent values, for which we fight all the time and values into time which are the indefectible values. The trans-time conscience that is not limited simply to a mentalism, but looks for a relationship with the body, becomes the person, towards the thought of new rights in the dimension of depth of the encounter (Di Santo, 2002 pp. 14-40). The man in his dispersion in the flow researches an identity in the encounter with the other with which

shares the sphere of pathos, the human dimension where responsibility is the link of showing uniqueness. If the global and one-dimension knowledge of modernity has proved full of illusions in its draft of *reductio ad unum* of the whole, it's still alive the concern to a temporality that expresses a suffering due to a quantitative condition that loses the man. The juridical universe in the encounter with the time dimensions, in my point of view, gives us the opportunity to overcome the temptation of reductionism present in our historic time. The domain of conscience perpetrated by an annihilating stunning due to the informational flow has meant the stagnation of a making-present, from which you can get away with thinking the sense that references all the time dimensions. The jurist has got in his hands and in his soul the keys to activate the relationship between the needs of the time of conscience and forms of time of knowledge.

4.1. On the basis of human rights. Moral conscience and juridical conscience

Human rights may be appointed as the interior of the law. The *ego* can form a subject but an impersonal subject cannot form the ego-person. Freedom and human rights are not the subject of science. The ego-person shows a anxiety for justice. Human rights constitute the ego of each individual, in his indispensability. *Philosophy of human rights* is enunciated in theoretical way, starting from man in his social relations, in the perspective of a historic and existential genesis of human rights. Genesis, history existence, awareness, emancipation of the individual are events that express a concretion of vitality where everyone is related not only to others in connection with the uniqueness and freedom of the ego as the other, but in the common vitality generative of social balance that is realized once again in making of the absolute conditionality of reality. The rights are born in a condition of participation in the event which becomes advent, a participation that is communication, which is covered, at this level, from a clear social uniformity, which then is converted into legal uniformity, which becomes power uniformity, with man as 'beginning and fulfillment' of this trip. Human rights find their condition of sustainability in the constant search for balance through the mediation of juridical, understood in its cultural and creative, never functional, sense. To reconsider the man in the history is the task of the 'historiography science', to think the man in time is the condition of philosophy. Conscience, to that effect, acquires a central role especially in relations with temporality. It is identified in the temporality with the relationship of conscience the way that permits to man to be autonomous and not merely individual. The landing is the institutional foundation of human rights and their root in the system of institutions. If we compare the relationship between private powers and public authorities in the power system, the private powers are rights, rights that become concrete. The definition "private powers" differs from individual rights because through private powers it is possible to understand if the effectiveness and relevance are really productive of effects. Only through private powers we can understand and achieving an understanding of rights, since the rights that are in reality. The distinction between private powers and individual rights once again takes on the dividing line between the philosophy of the rights which locates in the historic concretion the real 'powers' of the individual and the science of law that outlines the individual rights as qualifying schemes. Concretion, qualification, private powers and individual rights. The distinction is more understandable if 'read' in the wake of the two-dimensionality of the juridical time. What is the two-dimensions of the juridical time? The two-dimensions of the juridical time leads to think about a double dimension of time: in fact, it simply indicates on the one hand a subsequent law that repeals a previous law and on the other that there is an authority that makes the law. The one and the other side can be chosen from a juridical choice that is political decision, and being political decision implies an element of uncertainty. In this perspective are recalled the private powers such as rights in the concretion of the history because indicators of perception of the effectiveness of a choice in one and in the other direction. In one direction or another. In ancient age, the time made the right, under the forms of Empire or Church. Juridical choice and political decision are co-essential in the relationship between the need of the past and the possibility of the future (Capozzi, 2000 pp. 374-400). *Right looks ahead*. The schemes of juridical qualification are the projection of decisions of the social man, that with his *making*, connects the reality of individual aspirations and collective ones. The subjective rights as a scheme of juridical qualification. There is no longer the uncertainty of choice, the right goes in one direction, and the schemes of juridical qualification, called subjective rights, are the core of

guarantee of the protection of human rights, as they *make juridical* cultural issues of the communities who form the society. The State grants rights that can be defined fundamental but cannot recognizes human rights. However, the subjective rights should be extended not limited. Human rights are the most noble fruit of the historic event which sees the individual as a protagonist in his making social. Human rights are the inalienable powers that in time succession and spatial extension articulate the pace of the person as individual and as community, in the gradual acquisition of the awareness of his being in the world, in correspondence of the at the normative System which lay down the system norm for the protection and guarantee directions protection of human rights (Capozzi , 1998 p. 402). But at the same time, in the construction of the institutional foundation, human rights are inherent to the sphere of making of the person as individual and as community, as they are not recognized by nature but agreed to the law through the scheme of qualification of subjective law and regulated. It is the trans-time conscience which allows a structural and functional relationship with time itself. The struggle for rights is the mobile engine for the understanding of the values to renegotiate them or to defend them. Piovani writes: "The composition of a table of values all fixed and fixed for all is a presumption that besets every ethics, including the one that, for resentment retaliation, flips over its absolutism in a relativism which, while not admitting that the totality of values is unknown, is ready to deny the interior validity of any value" (Piovani, 2000, p. 14). If we remain in the conceptual framework to trans-time conscience, the axis of the reflection moves to the transmutation of conscience that becomes person, both in the intellectual conscience, both in the ligaments of the body so in bioavailability. Today, at the time of "Happen of anyone" there are philosophical trends of science that consider necessary to demonstrate the reduction of conscience to a mere synaptic functioning. But simply to say that there is no free will, it means determining the catastrophe about the foundation of rights. The trans-time conscience that activates the ego-person simply means thinking about new rights in the interest of the relationship between culture and body understood as a *plus of sense* because this interaction or sum between conscience and body gives the sum of the person with something extra, offering the possibility of opening new human rights and new reflections.

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