NATIONALITY AND CITIZENSHIP IN THE 21ST CENTURY

Universal rights and the sovereignty of states: an aporia

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Several Syrian refugees demonstrate in Edirne, Turkey, on December 21, 2015, with a picture of Alan Kurdi, the boy who drowned on the beach in Bodrum while trying to reach Europe. Refugees demand to be able to cross the border to Greece Photography: Alessio Mamo

The Universal Declaration of Human Rights is not the outcome of a process of collective reflection by societies on humanity and its rights; nor was it born in a context of equality between states that jointly drafted the document, but rather it was born out of an ideological and historical process undertaken by the states, marked by the post-war period, by the new regime and by the situation of some countries that were still colonised and others that were undergoing partial decolonisation processes. Reflecting this initial situation, and with the intention of generating a framework of universal rights, the Declaration's wording is a clear expression of political idealism permeated with universal ethics, but endowed with few instruments that would enable its effective materialisation. Indeed, in the years that have followed, it has become apparent that its content has had little impact on the violation of rights by states.

This article [1] does not seek to review or criticise the Declaration, because we believe that it is reasonable that there be an international reference document on human rights, all the more so when rights are being violated continually in coexistence with democratic processes. The idea behind this article is to point out that nation states violate human rights enshrined in the Declaration and this violation of rights has become central to the

foundations of the nation states. Above all, we will study how the “immigrant being”, as a political category, is stripped of their rights as a person and how this is evidence of the systematic violation of human rights by democratic states, despite the Declaration’s indications.

Inferiorised otherness

As can be seen, the separation between citizens and non-citizens is a constitutive element of nation states. This separation represents a categorisation of people that places some in a category of full rights, even though this is not the optimal situation (citizen category), and places others in a situation of fewer rights with respect to the former (inferiorised otherness).

Inferiorised otherness encompasses different categories of people who are conceived and treated as an othernesses that is not part of society as a whole, of the “us”. It is the immigrant who is at the gates of a Western country; it is the immigrant who is already settled; it is the descendants of immigrant families; it is the group who is seen as culturally different; it is the people who have physical features that are different from the majority group.

If we look at these “others” when they are immigrants (immigrant beings), we see that this is not just a temporary legal-administrative categorisation that everyone has to pass through when they come from poor places to settle in Europe, Spain or Catalonia; first and foremost, it is a social status that has to do with socio-cultural and economic dimensions, but above all political dimensions, that mark the terrain on which they will be located. They are neither welcome nor welcomed. They come in through the window because the door is closed, and nobody cares about where they flee from or why. And if they leave where they live but do not reach where they want to go, nobody cares about that either. At most, if they are lucky and their body turns up somewhere, they are buried anonymously and identified with a serial number in the cemeteries of Tarifa, Lesbos, Lampedusa or California, to name a few places. The fate of the “immigrant being” is death, the physical death to which the borders of a walled Europe bear witness each day. Or political death, which is the fate that awaits those who have been fortunate and have overcome the obstacles of physical death. [2] The “immigrant being”, at the gates of Europe and inside Europe, is the place of the “other”, marked and generated by the European and Western “us”; it is the expression of a gradual racism that has a bounded framework ranging from partial inferiorisation to the category of “non-person”, that is, total inferiorisation.

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At the gates of Europe and inside Europe, this naked life highlights the tension between guaranteeing universal human rights and the sovereignty of states. Since the Universal Declaration of Human Rights came into being, as Benhabib argues, [3] the right to have rights means recognising every human being as a universal person, regardless of their national citizenship. The Universal Declaration of Human Rights – beyond the criticisms that could be made about how it came about, the context, who took part in writing it and their pretensions – declares: (1) "Everyone has the right to freedom of movement and residence within the borders of each state" and (2) "Everyone has the right to leave any country, including his own, and to return to his country". [4] But, at the same time, the draft Declaration on Rights and Duties of States, put forward by the United Nations, says in its Article 2: "Every State has the right to exercise jurisdiction over its territory and over all persons and things therein, subject to the immunities recognized by international law". [5]. This sovereignty of states generates an aporia and necessarily associates universal rights with citizenship. In this respect, the "immigrant being" is on the border between the universalist rhetoric of rights and being a victim of the individual application of states' borders.

The state of exception

The most significant proof of sovereignty of the State –apart from the monopoly on the exercise of violence – is, to use Carl Schmitt's famous definition, [6] when it "decides on the state of exception". But, in a context of liberal democracy, how can a state exercise the state of exception? It is precisely this question – basically, a political question – that is denied by most public law jurists, who interpret it as a purely legal matter related to the need to momentarily manage an internal or external threat within a specific context of urgency. This stance belies a romantic conception of law that denies the violence that is constitutive of law itself. In this respect, in his eighth thesis on the concept of history, Benjamin says:

> The tradition of the oppressed teaches us that the "state of emergency" in which we live is not the exception but the rule. We must attain to a conception of history that is in keeping with this insight. Then we shall clearly recognize that it is our task to bring about a real state of emergency, and this will improve our position in the struggle against Fascism. [7]

Viewed in this light, the state of exception is a normalised and generalised political form in international relations, but also within nation states, and it is the norm and rule that guides politics. [8] In this respect, although the "immigrant being" represents a paradigmatic case of this state of exception, the regular, systematic exercise of rules of exception and suspension of rights with respect to the "immigrant being" is not seen as a permanent state of exception. We will now develop an argument in favour of this position.

The “immigrant being” within European territory experiences the state of exception and the suspension of rights on a continual basis because, on the one hand, they do not have the same rights that citizens have and, on the other, they are governed by rules that only affect them, that is, legal rules that only apply to them and not to the citizens of the country in which they find themselves. In addition, they must fulfil all his tax obligations like other citizens. There is a legal and administrative difference that translates into a political difference and becomes a dividing line in terms of rights that separates the “immigrant being” from European nationals. This state of exception experienced by the “immigrant being” and the suspension of rights are structural and normalised. They are laws democratically approved by right and left-wing parties in the parliaments of Europe. They are rules such as Spain’s Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration –amended several times, always to make it tougher – that perpetuate the category of “immigrant being” and institute the state of exception as the norm and the natural paradigm of “democratic” government.

Today’s liberal, “democratic” European states put these rules and laws into practice which, directly or indirectly, cause exclusion, segregation and violence. Despite being regulatory norms that have a legal form and structure and a supposed political legitimacy, these practices are particularly invasive and eloquent in themselves. In the name of regulating and ordering migration, regulations are developed that, instead of being equalising and egalitarian, create inequalities. In order to rise partially above this exceptionality, the State –for example, in the case of Spain – establishes two diabolical rules of play that are nothing less than an extension of the state of exception. On the one hand, it segments access to rights so that, as time goes by, the “immigrant being” can gain more rights so long as they do not lapse into illegality (supervening irregularity) and does not commit any type of crime. On the other, the State establishes a meritocracy dynamic with respect to access to rights, that is, it demands certain arbitrary requirements in order to grant rights and, if these are not met, irrespective of the causes, these rights are not granted.

Aquesta situació provocada per l’estat d’excepció deriva en la desigualtat política que viu l’“ésser immigrant” quotidianament, una realitat a través de la qual viu l’exclusió i experimenta que no és igual que els nacionals, i per això ha d’ocupar l’estatus que li toca: llocs de treball a què accedeix, barris on viu, escoles on van els seus fills i filles, llocs d’oci que freqüenta, llocs que ocupa en l’espai públic, etcètera. La situació administrativolegal serveix com a excusa per exercir la discriminació, com afirma Arendt:

> We actually live in a world in which human beings as such have ceased to exist for quite a while; since society has discovered discrimination as the great social weapon by which one may kill men without any bloodshed; since passports or birth certificates, and sometimes even income receipts, are no longer formal papers but matters of social distinction. (Arendt, 2009: 364). [9]

It is clear that material conditions for the general population can be unfavourable depending on the socio-economic category that the individual occupies. However, in the case of the "immigrant being", the category is predetermined symbolically and materially and the place they will occupy is delimited beforehand. Exclusion is maximum, it affects all spheres of their life; the "immigrant being" is questioned in all their ways of doing and being. They are only partially accepted when they develop the psychology of the oppressed and assimilate the behaviour required of them or when they triumph in a particular field, such as sport or art. This structural inequality, apart from being an obstacle to a dignified life, forms the base of the fracture of community life.

There is no possibility of being part of a community if there is no right to decide on this community's affairs. The "immigrant being" is not accepted as a part of the whole in their own right, they do not belong to "us". They are condemned to political death by the court of the state of exception, they are prohibited from political participation, that is, they are not recognised as being entitled to such a basic fundamental right as freedom. Nor are they entitled to participate on specific occasions –elections– derived from the structured delegation of political decision-making. [10] They are excluded almost totally from public life, they cannot act or form an opinion that could influence the general community, even in cases that involve them as an unwitting central player. Their space is that of silence and invisibility. They are only visibilised as an outsider, someone exotic and folklorised, to be used in discourses on cultural diversity – multiculturalism and interculturalism – or as a scapegoat to be blamed; as a problem, and as something alien and contaminating that must be controlled, watched and even extirpated.

In my opinion, the discussion on democracy and the state of exception must go beyond the boundaries of legal theory and be placed in the field of political debate. The state of exception manifests a mismanaged political crisis that has been taken far from the parameters of democracy as a guarantee of rights and equality for all. If the state of exception and the suspension of rights give a legal form to what should not be legal, then legal theory can only justify it as a *raison d'État.*

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However, the "immigrant being" not only suffers the progressive denial of personhood but, in many cases, is used as a *scapegoat* and held responsible for many political, economic and social ills. They are the ideal enemy for diverting attention from the real problems facing society and the ideal *scapegoat* for rallying the community around a common cause. They fit perfectly as an element of threat, be it cultural, religious, economic, language or security. The "immigrant being" is instrumentalised to the point that they may be presented as a real threat, subject to constant suspicion and considered a polluting element for

national health. The community views them as a threat and must immunise itself against them. The “us” experiences the “others” as a permanent threat, thereby establishing a deliberate and self-interested dialectic, to paraphrase Esposito, [11] de *communitas-immunitas*.

Racism as a mechanism of power

If society is a continuum (us) that must be protected, political power (the State) becomes a power over life, a biopower, which must protect and purify the community, the super-race, from the contaminating elements, that is, the sub-race. [12] Thus, the State introduces and activates racism as a mechanism of power over life, a power that is built on two legs: repression and production.

The State of biopower is the State of public welfare. It legitimises itself by providing the material conditions for survival and the propagation of life. Consequently, a State would lose its legitimacy and credibility if it could not protect its citizens from death caused by diseases, etc., and if it could not guarantee safety against internal violence, crime or extreme poverty. The existence of high infant mortality rates, for example, is unacceptable for a biopower State. Life becomes an object and an objective in the technology of power; in contrast, death is exiled from public life and the social body.

Just as biological racism was a justification for improving the species, the racism of the modern State is justified to defend society against a part that is considered to be a pollutant. And thus racism becomes part of the biopower State. And, in this respect, Foucault says:

> […] I think that, broadly speaking, racism justifies the death-function in the economy of biopower by appealing to the principle that the death of others makes one biologically stronger insofar as one is a member of a race or a population, insofar as one is an element in a unitary living plurality (Foucault, 2012: 315). [13]

Racism normalises and medicalises war and makes war the permanent condition of society. Biopower wages war in the name of security; it is a power that must guarantee securing mechanisms. Faced with any threat, it is licit to kill in the name of security. Racism trivialises genocide and turns lynching and threats that are suspect for the health of the social body into everyday occurrences. Racism makes killing the “other”, conceived as a contaminator of the higher social body, an everyday event, since it internalises and normalises society’s war against its enemies. Protecting society from individuals and groups that are foreign in the eyes of “us” implies that we are willing to kill, to murder those who threaten this society, its enemies. And if we understand society as a unit of life, a continuum of the living, then these threats and enemies are biological.

Death at the frontiers of the European and Western nation states is a death that is part of biopolitics, of the exercise of state racism to protect a national mass from the "others". The border, in this sense, is the ultimate expression of the battle against invaders and contaminators. Some extol the border because it is the symbol of sovereignty, of difference and resistance against universalism [14] but they overlook the fact that, in the name of sovereignty and law, it draws the physical line between what must live and what must die. There is no possible ethics at the border; it is a place of war where, in the name of sovereignty and law, the State kills. This border accompanies the "immigrant being" inside the State and, jointly with the border, it is also accompanied by death; in this case, not physical death but, as Foucault says, political death:

> When I say "killing," I obviously do not mean simply murder as such, but also every form of indirect murder: the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection, and so on. (Foucault, 2012: 314). [15]

Faced with this dynamic of nation states in which racism has become a tool of government and the state of exception the rule of governability, the Universal Declaration of Human Rights has become a largely irrelevant document in political terms. In fact, beyond its orientation as the horizon of a desirable (necessary) ethic, the Declaration has become a rhetorical form often used by states to mask their policies.

REFERENCES AND FOOTNOTES

1 — Some ideas expressed in this text are developed in the article: Shaimi, Mostafà (2017). "'Ser immigrant': una categoria biopolítica". Antígona emmordassada. Manresa: Tigre de Paper.
2 — Obviously, there are resistances to political death, struggles by individuals and groups. But here we refer to the established, predetermined framework.
3 — Benhabib, Seyla (2017). *Existeix el dret a tenir drets?* Contemporary Culture Centre (CCCB). Barcelona: Breus Collection CCCB, no. 83.
4 — Article 13 of the Universal Declaration of Human Rights, adopted and proclaimed by the United Nations General Assembly in resolution 217 A (III) on 10 December 1948.
5 — Article 2 of Resolution 375 (IV) of the United Nations General Assembly. Draft Declaration on Rights and Duties of States.
6 — Schmitt, Carl (2013). *Dictatorship: From the Origin of the Modern Concept of Sovereignty to Proletarian Class Struggle*. Cambridge: Polity Press.
7 — Agamben, Giorgio (2005). *State of Exception*. Chicago: University of Chicago Press.

8 — Hardt, Michael; Negri, Antonio (2004). *Multitude. War and democracy in the age of empire*. London: Hamish Hamilton. See also Agamben, Giorgio (2005). *State of Exception*. Chicago: University of Chicago Press.
9 — Arendt, Hannah (1943). “We Refugees”. *Menorah Journal* 31, no. 1: 69-77. See also Arendt, Hannah (1958). *The Human Condition*. Chicago: University of Chicago Press; and Arendt, Hannah (1997). *¿Qué es la política?* Barcelona: Paidós Ibérica; Arendt, Hannah (1993).
10 — They may vote in municipal elections if there is a reciprocity agreement with their home country.
11 — Esposito, Roberto (2005). *Immunitas: protección y negación de la vida*. Buenos Aires: Amorrortu.
12 — Foucault, Michel (2003). Society must be defended. Lectures at the Collège de France, 1975-76. New York: Picador.
13 — Foucault, Michel (2003). Society must be defended. Lectures at the Collège de France, 1975-76. New York: Picador.
14 — Debray, Régis (2010). *Éloge des frontières*. Paris: Éditions Gallimard.
15 — Foucault, Michel (2003). Society must be defended. Lectures at the Collège de France, 1975-76. New York: Picador.



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