

GLOCAL INTERFERENCES: HUMAN RIGHTS TO THE TEST OF THE 21ST CENTURY¹

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Abstract

The Authors review the study sessions of the Congress, reflecting on the relationship between the universality of human rights and their effective protection in the different legal systems, in the face of the provocations of globalization, which entail a reformulation of fundamental ethical and legal paradigms. The contribution aims to link and develop, within today's glocal context, the different research areas involved by the challenges of the 21st century, with the centrality of the person as a reference.

Keywords

Human Rights. Communication. Power. Territory. Law. Legal system.

Summary

1. Communication, participation, rights. – 2. Power, territory, rights. – 3. Law, legal system, rights.

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test of the 21st century”, which took place online from 24th to 26th November 2021, had the merit of strengthening the already existing links between very distant geographical areas, considering the different origins of the Speakers involved. It was also an opportunity to address multiple legal issues, moving in three important directions. The same ones that give the title to the paragraphs of this contribution⁴.

1. COMMUNICATION, PARTICIPATION, RIGHTS

1.1. Information technology, meanwhile advancing impetuously, digs furrows, amplifies long-existing differences and creates new ones. In the sign of the rarefication of distances, methods of interaction and relationship also change, but with the risk that human relations sometimes degenerate into violent forms that are detrimental to fundamental rights.

In this scenario, there is an excessively enthusiastic application of artificial intelligence systems. These are considered as a sort of panacea to solve any problem. Furthermore, the idea of a technological singularity – capable of emulating human subjective faculties, including those enclosed in intelligence – that will soon surpass man in the many areas of his existence, is increasingly widespread. Inevitably, all of this subverts some important ethical and legal paradigms now consolidated.

The implication of this blind adherence to any artificial intelligence project is that of – as Paolo Moro also explains – a technological dehumanization, since machines are no longer simply programmed, but they learn even by themselves – drawing from the examples and the myriad of data present in the Network – to the point of building its own instruction and education.

⁴ Although the contribution is the result of the joint reflection and collaboration of the two Authors, paragraphs 1.2, 2.2 and 3.1 are written by Luisa Lodevole, while paragraphs 1.1, 2.1 and 3.2 by Luigi Prosia.

In the name of their acquired autonomy, we then began to speak of the rights of machines, therefore of electronic personality, looking also at their possible responsibilities in the event of damage caused to man. Hence, the onset of a climate of post-humanism, which makes a philosophical-juridical reflection both necessary and urgent on what is meant by man, by machine and, above all, by artificial intelligence. The latter, in fact, is a mere metaphor particularly abused, which as such has obscure connotations and ambiguous meanings.

It is also appropriate – as Moro repeatedly highlights – move towards an ethic of technological sustainability, certainly favoring technology if it is good, but limiting it if it is bad, especially today that the analogy between man's mental states and mechanical intelligence is often taken for granted, to the detriment of human consciousness. For that reason, true human feelings and emotions, which can hardly be integrated into a machine, are not taken into account.

The opportunity to be able to disconnect from the Network, so as not to be flooded with a myriad of information – not always truthful – that we receive daily through our devices while we are busy doing something else, certainly belongs to the logic of sustainability.

In the age of the greatest abstraction of money, precisely information – to which Guido Saraceni dedicates his speech – configures a very precious resource, with undoubted economic repercussions, being able to determine sudden upheavals of the markets, and so unexpected wealth and/or poverty. Moreover, information can affect the electoral and political balance of a country, as evidenced by the relevance – proven by extensive scientific literature – that fake news had in respect to the election of US President Donald Trump in 2017 or the victory in England of the Brexit referendum the previous year. Finally, the extraordinary power of information technology can seriously damage even public health or national security, since the immense amount of content on the Network often feeds populist movements and conspiracy theories.

All of this is even more pernicious if we take into account the fact that, thanks to the advent of the Internet and social media, the information process now takes place horizontally, without any control by the gatekeepers. Citizens themselves are at the same time producers, users and transmitters of information. However, citizens are often lacking their critical approach to the many multimedia signals coming from the most varied information sources, so that this great availability of information seems to have no positive implication for our democracies. Indeed, individuals hardly ever put into place a specific exegesis, which allows them to place received signals in their horizon of meaning, so as not to be attracted in an abstract manner. Therefore, today's information opulence paradoxically changes into its opposite, that is, in the lack of information (or informational deficiency), as if we were dramatically short of news.

If so, in order to ensure the full enjoyment of democratic freedoms, while also reducing the digital divide between poor and rich countries and, within the latter, among the different groups of the population, it is essential – as Saraceni points out – to spread a culture of digital devices, understood as awareness of their correct use. It is not enough that information is widely accessible, but to avoid that opulence and poverty of information, as in a rather curious conceptual twist, come to overlap, a digital civic education of universal nature is necessary.

There is more. In addition to fuelling behavior that is not prudent for the freedoms and rights of individuals, the digital environment, acting as a new ring of Gige able to guarantee the anominated, encourages – as evidenced by the juris-philosophical reconstruction of Maria Novella Campagnoli – also the realization of real criminal conduct. This, in line with the more and more widespread temptation to overcome any moral and juridical limit, increased by a digital narcissism, which leads the technological man to frequently reveal the most intimate aspects of his life. This results, in some cases, to a dangerous media overexposure, which – as Campagnoli warns – can come to integrate the extremes of the crime

of revenge porn, if material with sexually explicit content is disseminated without the consent of the person concerned.

On the other hand, in the Network the transition from narration to overexposure, or rather from sexting (absolutely lawful conduct of young lovers, aware and consenting, who share images and videos in intimate activities or poses) to revenge porn (criminally relevant conduct to the detriment of those who see their intimacy exposed to public ridicule without having given consent), can be facilitated by the features of volatility and permanence of digital information. The latter, in fact, being modular, easily decomposed and instantly shared, is destined to an extraordinary vitality that knows no end. Consequently, the intimacy of sexuality, once delivered to virtual reality, by a niche platform can spread and recur unexpectedly – for an arcane combination of algorithms – on many and different platforms, with a planetarium of particularly relevant reverberation on the rights of the persons exposed to the media pillory, who undergo an authentic act of prevarication and domination with lasting consequences.

1.2. The realm of new information technologies is not the only field in which human rights are put to the test as there are several philosophical-legal issues – analyzed by the speakers at the second *International Humanities and Rights Global Network Conference* – generated by globalization and the social transformations that have occurred in the last century.

The new ways of information circulation, from paper to virtual, from localized to cross-border, have challenged the mechanisms for securing rights enforceable within the social and legal systems of the nation-state and have shown the need to formulate new patterns of protection for all those who, in front of new powers and influencers, are vulnerable.

The world citizen assuming that he has an adequate digital literacy may have difficulties confronting a language that follows a market logic and not that of truthfulness and the best interest of the weaker party, in front of

communication channels and data flows that overwhelm, overlap him, and cause confusion, even more so if he is already fragile due to the lack of awareness or experience, such as the child.

Advertising itself represents an activity that has demanded specific regulation not only at the national but also at the international level – as Martina Lourdes Rojo illustrated – as it is a form of communication that is potentially abusive or misleading and, therefore, detrimental to fundamental rights insofar as it can lead the behavior and decisions of the addressee/consumer to his own economic disadvantage or even health prejudice.

The minimal amount of news made available by mass-media power puts all citizens of the information society in a weakened position under the disguised appearance of the easy availability of more knowledge and technological skills. New inequalities and asymmetries appear in the scenario, comparable to the old ones, which have long been counteracted through political claims and legal achievements to grant everyone a balanced weight in public life.

If new technologies offer unimaginable channels of communication to the generality of users, power imbalances, exploitation of the other's good faith and outright fraud, speculation and abuse of a market-dominant position are also manifest in the field of ICT, dynamics that still reproduce the pattern of subjugation and prevarication.

While the legal system is dealing with new forms of speculation and malpractice, it faces old inequalities due to established social roles in society.

In the history of Brazilian society, for example, – according to Claudio Roberto Brandão's contribution – up to the middle of the twentieth century, the link between widespread patriarchal regimes, the consolidated domination of men over women within domestic and social life, and the absence of women's participation in public and political life was evident. In the speaker's reconstruction, the basis of the Luzo-Brazilian political-economic system was the landowning culture and the predominance of

male labor over female labor within the family. This separation of social roles was so deep-rooted that it caused a delay in the acknowledgment of complete subjectivity in law and legal equality of women within the institution of marriage, the latter being considered partially incompetent until the second half of the twentieth century.

Following the same thread, it was highlighted that the extension to women of the universal right to vote and their admission to public functions in Brazil was the outcome of a journey by successive milestones – as recalled by Renata Celeste Sales – since the patriarchal regime did not allow women any role in public life, but only in domestic life.

Old forms of violence against women and new ones, unfortunately, recur because, with the pandemic, infringements of fundamental rights against the female sex have multiplied: if before the epidemiological emergency, one-third of women in the world had experienced violence, since then, the percentage has risen to two-thirds, in the various forms that can appear: sexual, moral, psychological, patrimonial, social or in the form of so-called “vicarious violence” exercised not directly against the primary victim, but her children or indirectly. Women’s rights cannot be separated from human rights.

2. POWER, TERRITORY, RIGHTS

2.1. The dynamics within the global dimension, which can hardly be satisfied by a single political actor, in itself concluded and of limited size, what is the State, are increasingly bringing to light the limits of the centralistic system. This is also demonstrated by the growing attention to the networks of metropolitan cities, the regions with their request for autonomy, the levels of government closest to the citizens, as well as by the great interest for all phenomena that take place at the level of the European Union or international law.

The State with its constituent elements, where – according to the modern constitutionalism – the power of government is democratically formed to guarantee equal rights, has now become – as Stelio Mangiameli clarifies – only one of the possible institutional formulas of our complex societies. The current world stage, in fact, is organized in a plurality of large political units, founded on mobile borders, which can expand, as well as reduce, according to logics different from those of statehood. Political units, which connect with the center in an asymmetrical way, since they are based on several institutional levels, often even overlapping.

All of this leads to (re)consider the particular political form of the Empire, which has, as its structural connotations, the collaboration between the different ethnic groups that inhabit it as well as the interdependence between the many powers that structure it. However, even the Empire, if ordered in a democratic way, like the State can accept the principles of modern constitutionalism, ensuring a composition of its different units of a non-competitive type. In truth, such a form of distribution of power in a widespread and inclusive way can succeed – as the Speaker illustrates – in the ambitious goal of transnational cooperation and peaceful coexistence better than a sovereign state. The latter expresses its exclusive jurisdiction according to an internal hierarchy of powers and not through a negotiated accommodation of the right to the concrete case as instead the Empire does.

Therefore, because of internationalization of the economy we are in the midst of a spatial revolution, which daily challenges that symbiotic relationship that – since the birth of the modern state – exists between the territorial dimension and the state authority. It is certainly no coincidence that the sovereignty of the State has been constantly measured and redetermined precisely through the territory, which is its legal prerequisite. The organizational logic of imperial power, instead, having at its base the absence of fixity and territorial exclusivity, today seems to engulf states, provoking – as Michela Michetti also illustrates – a gap between ordering

and localization, to the point of making us instinctively overcome the idea of the territory as an element that founds and orders power.

On the one hand, global interference impacts the consistency of the territory; on the other hand, it seeks its legitimacy precisely in territoriality. The flows of wealth, information and people are constantly hooked up to specific territorial components, in the context of a mutual contamination between global and local. As a result, the same globalization stimulates a process of reterritorialization, both downwards, going to reallocate power in the different sub-state levels of government, and upwards, through the processes of European and international integration.

Moreover, given that the articulated and heterogeneous global community to show itself incapable of guaranteeing the protection of rights, since it is not a real legal order in which political decisions follow democratic logics, it is still the State (with its territory) – as the Speaker specifies – to make it possible to preserve the value of the human person even in the fluid and disjointed context of globalization.

Furthermore, globalization undermines the other fundamental relationship instrumentality – always at the base of modern constitutionalism – between the two distinct poles of freedom and authority, for which the latter is at the service of the person, who assumes a real substantial precedence over any constituted power.

It is with the revolutionary periods experienced in England, France and America between the seventeenth and eighteenth centuries – when some principles of organization and rationalization of power (the principle of division of powers, the principle of legality and the democratic principle) change the original absolutist physiognomy of sovereignty – that the exercise of public authority is functionalized to the recognition of the rights of the person. Then, in the constitutional structure of the second post-war period, the person – as Claudia Cipolloni highlights with her historical reconstruction – abandons the isolated and atomistic polarity of the liberal individualistic tradition, in order to project himself/herself into a more distinctly social dimension, in which the protection of freedoms

(positive and negative) necessarily intersects with the recognition of the equality of individuals.

Starting from the twentieth century, on the contrary, the transformations caused by global forces impact on the institutional structure forged by modern constitutionalism. On the one hand, the protection of the person is entirely subjugated by the impetuous development of technocratic domination. Therefore, it is necessary – as the Speaker hopes – to relocate man to the center of the universal network of powers, re-editing the correlation between authority and freedom according to the personalist principle. On the other hand, the State is now showing itself to be greatly weakened in terms of its autonomy and decision-making capacity as regards the guarantee of fundamental rights, in particular of social rights, having lost the monopoly on the government of the national economy and on the redistribution of wealth.

In other words, we are faced with a progressive emptying of the political-juridical concept of sovereignty that, opposite new global events, would have regressed to the point of plunging the State into a condition of an irreversible crisis, even anticipating its sunset.

2.2. The tension between the exercise of power and the guarantee of fundamental rights and freedoms, among the many lines of research drawn, was indeed the leitmotif of the Congress, which ultimately resulted in a harmonious symphony thanks to the ‘direction’ of the organizers.

From the citizen’s individual subjective public right towards his historically and geographically circumscribed nation-state (under the rule of law) to universal human rights that, as regards the foundational aspect, are above all borders and released from any political regime and sovereign human power, not only the Congress ideally embraced a boundless territorial extension, but it also opened up the horizon of reflection from the local sphere to that of the entire globe, as the title suggests.

In particular, scientific reflection has outlined – in Stelio Mangiameli’s opening remarks – the boundaries of a new public-law science capable of

understanding constitutional phenomena according to renewed conceptual categories, in a changed panorama of rules' production, which only to a small extent are now attributable to the State.

In response to the new challenges not only of environmental protection and artificial intelligence but also of migration – towards Europe, for example, as Lucas de Alvarenga Gontijo stated – It seems clear that the state-centric perspective – where all included are equal, and the excluded unequal – and outdated governance architecture should be adjusted and shaped in new ways.

The problem of the regulation and management of migratory flows confirms and reinforces this direction since the approach dictated by the State's political formula with its citizenship laws increasingly fails to cope with the complexity of concrete situations and inevitably produces grey areas, categories of non-citizens to whom fundamental rights are not guaranteed.

Even more thoroughly, legal-philosophical reflection leads to criticism of modern positive law, which assumes its mere existence and permanently self-defines itself in a system of tautological circularity, thus revealing the need – according to Gontijo – for a re-founding of law, anchored in the past and rooted in the humanitarian tradition, in order to face today's migratory crisis.

In another regard, the condition of migrants is under consideration – in Pedro Garrido Rodriguez's perspective – in order to denounce human rights breaches detected by major Non-Governmental Organizations, mainly due to the failure to reach the goal of an international agreement on a permanent quota system for their distribution.

The alarming numbers of refugees and displaced persons in the world, according to data provided by the United Nations High Commissioner for Refugees, do not justify – according to the Rapporteur – the lack of an adequate solution to the humanitarian crisis and the serious omissions in the reception and management of migratory flows by States – which have limited themselves to mere systems of surveillance and border control –

while they should lead to renewed confidence and commitment for the adoption of a multilateral covenant that will to uphold respect for international and humanitarian law.

In the same direction, the guarantee of fundamental rights and freedoms of individual and corporate personalities can be interpreted the constitutional history of some States, which struggled for independence, such as Brazil – as in Margarida de Oliveira Cantarelli's exposition.

The current geopolitical design of South America – tracing the chronology from the explorations of the New World to the present, in the years in which the 200th anniversary of the independence of many of its component States occurs – has been the outcome of fights for freedom of individuals and for the self-determination of peoples.

Bloody conflicts over boundary demarcation marked the history of Latin American peoples, reflecting the 15th-century conception that one essential feature of the state was land, without which it would be impossible to establish a permanent human group legitimized to assert sovereignty.

In the narrative of Brazilian history, according to the speaker, it is evident the combination of three forces, which – the exercise of power over territory, self-determination of peoples, and sovereignty – led first to the division of colonial territories – through agreements and treaties that drew borders often artificially without correspondence to the interests of the peoples – and later, through processes of constitutional transformation, to the proclamation of independence.

While the 19th century was characterized by the struggles for independence of the South American States, the 21st century is the scene of processes of integration of those same states that had a shared history of domination, almost in a systole and diastole movement – as pointed out by Santiago Deluca.

All these processes of institutional transition can be interpreted as the effects of the action of the same driving forces: the assertion of the

freedom of individual and collective subjects and the demand for the guarantee of fundamental rights.

Despite the underlying economic matrix thirty years after the beginning of the process – promoted with the Constitutive Treaty of a Common Market of March 26th 1991 – through a decision on March 26th 2021, which gave impetus to the work on the first draft of the Mercosur Citizen's Statute, the member States have shown that they are striving for uniformity of regulation not only in the commercial sphere but also in other areas of citizens' lives.

Although the free movement of people was the starting point of a process that, in an economic view, also considers people as productive means, this does not prevent the States from working to create a broader integrated space that brings citizens closer together – even as a defense in the face of globalization – through administrative and social policies, such as those concerning the recognition of educational degrees and driver's licenses, as well as the rights to education, to retirement, to be beneficiaries of health services.

The adaptation of constitutional formulas from colonies to sovereign states to the creation of a common market can be read not only as of the result of economic laws – according to the Speaker – but also as a tension of legal structures toward their intrinsic purpose, that of the maximum welfare of citizens and the common good.

3. LAW, LEGAL SYSTEM, RIGHTS

3.1. The second International Congress of the *Humanities and Rights Global Network* has further knitted the threads of the net – thanks to the contribution of all the speakers – giving life to a fabric with a complex and ordered design, fruit of the attempt to bring the multiple back to unity, to ease the tensions produced in the different social and legal systems by the

epochal change underway by rediscovering the lowest common denominator, the human person and his or her rights.

By the combination of individual and collective work, a contribution was made to scientific research on the role and function of law and the foundation of human rights in the new scenario of intersection – or *interference* – of sectoral norms and state systems, concentrations of assets and neural networks, elevating each issue from the particular level to the higher level of detached and rational reflection, broader and deeper, like the astronaut's gaze on the Planet, which sweeps and crosses all borders, yet must land again according to precise space-time coordinates that require relocation.

From the greek *polis* to empires, from nation-states to international organizations, from the multilevel organization of power to the decentralization and de-territorialization of the web, the *Network's* various lines of research offer suggestions on the particular phase of globalization accelerated by the pandemic, in which new aggregations of power threaten the erosion and resistance of human rights, although they are subject of covenants and conventions between sovereign states.

The technologies of mass communication, the loss of territorial anchorage of government structures, old and new mechanisms of domination and exclusion of social groups, the processes of fragmentation and federalization of states, and the historical contingencies of migratory flows all call for reflection on the foundation and function of law so that this relational phenomenon, through its articulation in the various laws – *leges* – may provide an answer in conformity with justice – *ius*: if everything changes, can the norms still define what is right or wrong?

In the reality of glocal interferences, if the old poles of attraction – such as nation-states, parties, etc., in Agata Cecilia Amato's synthesis – lose their capability to represent their members who are no longer rooted in the territory; if the old models dissolve, a renewed semantics of many areas of law, which is by definition an “activity for” a relational paradigm thanks to its structural criteria, is necessary.

In the global society in which languages rapidly standardize, markets harmonize according to commercial logic, information travels along routes different from the ancient navigation routes, and goods lose material support, the risk of a new Babel, of conflicts exacerbated by old inequalities and new poverty such as the digital divide, deprivations of freedom to move and act, and mechanisms for excluding those who are qualified as “surplus”, such as migrants or the disabled, becomes apparent. The analysis of the condition of vulnerable subjects brings the reflection to a different ground, that of the meaning and direction of human life, of its inestimable dignity that is not taken away by weakness or fragility but rather made more evident since we all, to different degrees, experience limitation and are oriented and re-dimensioned by it.

The goal of inclusion proper of social and legislative policies induces the philosophical-legal argumentation to refer back to the central idea of law, according to which every human being deserves to be treated simply as a person, and to repudiate an exclusionary concept-that of the social contract-that leaves out of coexistence the incapacitated, foreign, poor, ignorant, presupposing the idea of the consent of rational, independent, competent subjects.

While biotechnologies and biomedicine make it possible to overcome some barriers to the inclusion of the disabled – namely, the various types of functional, physical, intellectual, biological, motor, and genetic diversity – yet a medicalized approach to their situation proves insufficient to guarantee adequate protection of rights – as highlighted by the work of Claudio Jesus Santagati.

According to the speaker, it is necessary for the law in force to recover the paradigm of the centrality of the person based on the recognition of equal dignity regardless of each person’s disability since only the reconstruction of a social fabric of support for the most disadvantaged situations can lead to the effective integration of the excluded. The legal system should therefore change its qualification of disability – the result of a value assessment rather than a diagnostic one – as an abnormality or social

dysfunction to be recovered or repaired through welfare practices and place it in a different symbolic and legal place, the dynamic and interactive space of relations between a subject and the community that surrounds him.

The contemporary efficient and accelerated society under the illusion of solving all the problems of human existence with scientific progress, in the Promethean pretension of eliminating suffering, the precariousness of life, and finally death from its horizon inevitably fails by losing the sense of its subsistence, shelves the weakest people, such as the disabled, and causes the exponential growth of the excluded, displaced without rights and finally criminals.

The analysis of criminal policy in Brazil – as represented by Klelia Canabrava Aleixo – has brought to light that the society produced by neo-liberal capitalism disguises violence with rationality, sacrificial criteria as market criteria, and, concealing a mechanism of social exploitation and disregard for human life, places the exceeding people in the non-places of segregation and confinement until it crushes them against the wall of criminal life.

The struggle for global market sovereignty follows a military logic, yet, unlike the disputes for political domination that ended historically with the statement of fundamental rights and freedoms, it ends up with a form of financial totalitarianism that, through processes of human rights inversion, legitimizes the denial of these rights to those who are foreshadowed as subhuman or monsters, thus generating conditions of medical apartheid or pockets of criminality.

3.2. In the sign of a total criminal law, which loses the main character of fragmentation, no longer delimiting – in a clear and selective way – those facts so serious as to be considered worthy of punishment by the legislator, today we are witnessing an irrepressible extension of the area of punishability.

Criminal law has become – as Roberto Rampioni declares – a technique of control of the social system, which incomprehensibly no longer operates within the limits necessary for the full expression of individual autonomy. It is enough to think how, in the context of the criminal law of the economy, the simple administrative interest in a correct management of economic relations is exchanged with those entities really in need of extreme protection such as legal assets. In this way, the legal asset expires in pure form, assuming contingent and arbitrarily decided contents. Conversely, it even becomes a driving force of criminalization, no longer having the relevant function of guiding the choices of criminal policy.

Today, in fact, it is not only the legislator who gives definitive form to the legal model, but also the interpreter in the application of the right – albeit illuminated – contributes to the determination of the real offensive content of the crime. Hence, the notion of jurisprudential criminal type, which condemns the principle of the absolute legal reservation to its final goal. Consequently, if the postulate of the law as the only source of criminal law has waned, freedom is seen as precarious and it becomes difficult to say what protects the citizen from the authoritarian power of the State.

In addition, due to the increasingly significant role played by the victim's expectations of justice, criminal law is in danger of dissolving, pursuing goals that sometimes distort it, some others times denounce its ineffectiveness. The same typicality judgment ends up being emptied on the functional level whenever – because of the so-called social sentimentality – a given behavior is qualified as illicit when it is so in the dominant minds of people.

If this is the framework of current criminal law, a critical reference to its conceptual and normative delimitation is soon needed. In order to establish – as the Speaker textually states – the boundary line between legislative and judicial power in the best humanly possible way. The hope is that of a liberal criminal law, freed from the contingency of political

decisions, which will once again become a real instrument of guarantee for the citizen and his legal assets.

With a view to controlling the current legislative ambitions of the judiciary, the guarantor meaning of the prohibition of analogy pursuant to Article 25, paragraph 2, of the Italian Constitution also must be rediscovered. Prohibition – on which Cristiano Cupelli focuses his presentation – by reason of which the criminal judge has a merely reconnaissance task of the single words or phrases that define a criminally relevant fact, since he cannot replace the legislator in drawing the boundaries between the lawful and the illicit.

Nevertheless, today the judiciary claims to expand its space for action. Judges try to fill the alleged regulatory gaps through extremely creative interpretations, as if the punitive power were not in the hands of Parliament, which, instead, is the only subject legitimized to carry out the options of criminal policy. In this way, the freedom of self-determination of individuals is irreparably compromised. The knowledge upstream of the incriminating norms and the predictability of the sanctioning consequences of their conduct are no longer assured. If identical cases are evaluated differently by the individual judges who find themselves examining them, the equality of citizens before the law also fails, even going so far as to question the educational function of punishment.

Against this tendency – almost an obsession – of the judges to fill any regulatory gaps, the Italian Constitutional Court also sided with the sentence n. 98/2021, which reaffirmed the importance of the principle of legality under the plan of the reserve of law, therefore the monopoly of Parliament in the choices of criminalization.

On the one hand, the Court's ruling is intended to be a warning to the judges of merit and legitimacy so that they do not engage in too elastic interpretations, detached from the legal type, even where they find strong needs for substantive justice that they believe they must satisfy. On the other hand, it is also an admonition to the same legislator who, in compliance with the principle of precision, when drafting criminal cases is

called upon to formulate precise and determined rules, from the semantic point of view of the clarity and intelligibility of the terms used, such as to avoid the current propensity of the jurisprudence to all-encompassing.

The intent – as the Speaker hopes – is to give new impetus to the prohibition of analogy, to overcome an important obstacle that has always accompanied its relief and that is linked to its justiciability. The judgment cited, in fact, seems to open a way to allow the Court to review the constitutional legitimacy, not only of the criminal provisions, but also of their interpretations, thus reaffirming the greatness of the principle of legality, always placed to safeguard freedoms and democracy.

At the end of these reflections, proceeding in an equal but opposite direction, we must also consider the interference, this time of the legislative power in judicial affairs, which is found in today's experience (European and world) and which – as Vincenzo Baldini illustrates – entails a worrying compression, both of human rights (proclaimed in international treaties and conventions) and of fundamental rights (crystallized in state constitutions).

Such interference is the result of the affirmation of certain political structures, which transfigure the rule of law in an authoritarian sense, bringing out the absolute strength of those who govern the country. Hence, a de-institutionalization of decision-making power, often centralized in a single person, which comes out of the juridical-formal ranks that guarantee democratic pluralism. At the same time, also an autonomization of the groups and individuals, who, no longer having confidence in the political parties, claim to participate in the democratic dialectic through new circuits made available by the Network.

Emblematic of the aforementioned autocratic drifts are the state realities – focused by Baldini – of Hungary and Poland, where the dependence of the judiciary on legislative power is now consolidated. Indeed, following some constitutional reforms, in these countries for some years now it has been foreseen an early retirement of many of the constitutional judges, forcibly retired and then replaced with new magistrates elected with the consent of

the party of the governing majority. All of this, without taking into account the autonomy and independence of the judiciary.

Yet, as the legal systems show ever greater sensitivity to the protection of rights, every political choice must – as the Speaker claims – proceed synchronously and one-way with the development of democracy and the rule of law. All the more so today that the strong recourse to the state of emergency, as a condition of exceptionality in which constitutional freedoms are severely limited, affects in a truly worrying way the fate of democratic states.