

Centre for Studies in Theory and Critics of Social Regulation

Research Programme for the Period 2008-2012

Institution of Social Bond within Post-national Context

For the period 2008-2012, the Centre for Studies in Theory and Critics of Social Regulation (TCRS), aims at developing a wide research on the topic “Institution of Social Bond within Post-national Context”. This research programme is based on the present necessity to critically analyse the social bond institutive processes. The general hypothesis is that nowadays the study of these processes requires the elaboration of a theory of law and institutions able to surmount the nationalistic paradigm. Such an approach will be tested through the analysis of the institutive power of symbolic dimension in relation to institutional contexts today bereaved of the sources of meaning guaranteed by the modern idea of Nation, or of the organizational structure of State.

This research programme should be articulated on the basis of five perspectives:

- 1) Symbolic Forms and Social Bond;
- 2) European Identity;
- 3) Post-national Legitimacy;
- 4) New Forms of Governance and Procedural Turn;
- 5) Crisis of Regulation and New Models of Subjective Identity.

1) Symbolic Forms and Social Bond. Along this first research line, clearly framed and developed within Bruno Montanari’s works, the question of the relationship between symbolic dimension and institutional dimension should be studied starting from a conceptual analysis of organization of power. In particular, the “ontological” difference between factual power and political power underlines the necessary qualification of the institutional government by means of immaterial or symbolic elements. Such a distinction is based on a specific theory of intersubjectivity that is like a basic cognitive criterion for the construction of social bond in a pluralist context. According to this approach – which could be interpreted as a “philosophy of the finitude” with a Kantian matrix – the factual difference, typical of being the “other”, could just be surmounted by virtue of an ontological parity that joins individuals. For a pertinent political and institutional framework see B. Montanari (a cura di), *La possibilità impazzita. Esodo dalla modernità*, Giappichelli, Torino 2005; Id. (a cura di), *Stato di diritto e trasformazione della politica*,

Giappichelli, Torino 1992. For more theoretical features see Id., *Potevo far meglio? Ovvero Kant e il lavavetri. L'etica discussa con i ventenni*, II ed., Cedam, Padova 2004; Id., *Itinerario di Filosofia del diritto*, Cedam, Padova 1999.

In the same direction, it seems worthwhile to work on the subjective dimension at a collective level as a space of theoretical understanding of a new integration. This topic has been particularly studied by Alessio Lo Giudice in *Il soggetto plurale. Regolazione sociale e mediazione simbolica*, Giuffrè, Milano 2006. At this stage of the analysis, on the one hand it is valuable to take into consideration social pluralism that, in the light of a post-national dimension, evokes the perspective of a unifying coordination; on the other hand the concept of subjectivity is significant, as it is a scheme of imputation and institutional articulation that, through its symbolic nature, stimulates self-interpretation of differences as components of a unitarian political project.

2) European Identity. The construction of a shared identity, above all within an extremely pluralist context, presupposes an understanding of the individual where the otherness is conceived as a constitutive feature of individual subjectivity. In other words, without the already mentioned existential awareness of the dimension of an ontological parity within which individual relationships are developed, the formation of a shared political identity seems unthinkable. In this regard, the political construction of E.U., with the correspondent question of European identity, seems to be a pertinent context in order to verify the sustainability, at the institutional level, of the theory of inter-subjectivity developed within Montanari's works. Besides, all members of TCRS are involved in a project of internationalization, coordinated by Bruno Montanari, on "The Construction of the European Identity: Collective Security, Individual Freedom and Models of Social Regulation", promoted by the Faculty of Law of Catania and financed by the Italian Ministry of University and Scientific Research.

At this stage of the research, we mean to verify if the socio-political question of the recognition, or construction, of an European identity could imply the symbolic formation of a space of inter-subjective solidarity. According to this perspective, identity would be a condition of possibility for the extension and articulation, beyond the national sphere, of a model of coexistence that produces and reproduces a social bond. Such a consideration, that entails the critical study of legal and political categories of the twentieth century, has been already set for a long time; see, for example, B. Montanari (a cura di), *Spicchi di Novecento*, Giappichelli, Torino 1998. At the level of political philosophy, one of the hypotheses inspiring this phase of the research is that among the conditions of possibility for the construction of a shared European identity there is the symbolically characterized institution of an European plural subject. A political-institutional subject that, qualified as a third actor, could be able to induce a shared

perception, at the European level, of contexts, problems, solutions. On this specific hypothesis see A. Lo Giudice, *The Shared Perception of Social Contexts and its Conditions for Possibility*, in “Ratio Juris”, 2008 (forthcoming); Id., *Visione ontica e visione riflessiva a confronto sul futuro dell'identità collettiva europea*, in “Sociologia del Diritto”, 2, 2006, pp. 71-98; Id., *The European Self. A Reflexive Approach Towards European Identity*, in “Tilburg Foreign Law Review”, Vol. 12, N. 2, 2005, pp. 145-168. Furthermore, Lo Giudice is completing a doctoral thesis on the topic of the European identity.

3) Post-national Legitimacy. The analysis of the relationship between symbolic dimension and institution of political power leads to understand the wider scope of the processes of symbolization. Indeed, these processes should be interpreted within the category of political legitimacy in an industrial and then post-industrial context. In general, we need to work on the processes of legitimation of institutional power in the light of the typical post-national conditions. This research line has been already laid down by Bruno Montanari in his works on the question of representativeness within the Welfare State: *Effettività e giuridificazione. Il diritto sindacale negli anni 80*, Franco Angeli, Milano 1990. In particular, we mean to study the theory of technical-functional legitimacy already set in Hobbes' conception. It is well-known that, according to this model, legitimacy of a political and legal order is defined in relation with the capacity of the latter to solve the problems of life in common. Here the hypothesis consists in verifying if the obstacles that the processes of political symbolization have to deal with, particularly as regards the problem of legitimacy, are indeed the expression of a historical and social crisis of technical-functional legitimacy. It is valuable, then, to study the conceptual link between that kind of legitimacy and the symbolic conceptualization. At a historical-critical level, this research line will be developed studying the anthropological and political problem showed by the Weimar crisis. On this last point Giovanni Magrì is completing a doctoral thesis.

4) New Forms of Governance and Procedural Turn. The research on processes of social bond construction leads to study those forms of regulation of post-national complexity that aim at guaranteeing the institutional dimension of inter-subjective relationships. From this point of view, the novelty of the so called “new forms of governance” does not seem confined to those features that are different from the traditional regulative forms of collective action, primarily from the *command and control* kind. Actually, these new forms entail a conception of law radically different from the one that is central in the history of modern legal thought, built on the primacy of the Nation-State. This topic has been already studied by Alberto Andronico in an essay published together with Antonio Lo Faro: *Defining Problems: The Open Method of Coordination, Fundamental Rights and the Theory of Governance*, in O. De Schutter, S. Deakin (ed.), *Social Rights and*

Market Forces: Is the Open Coordination of Employment and Social Policies the Future of Social Europe?, Bruylant, Bruxelles 2005, pp. 41-96. The point of this research line is then the construction of a new comprehensive order (not only juridical) able to express the loss of control on reality that concerns systematic thought and the modern idea of reason as a framework of it. Pursuing this aim means to come across a space where the problem of regulation is inevitably interconnected with the one of knowledge and with the meaning of coexistence, as Andronico already underlined in *Un "nuovo genere" di ordinamento. Riflessioni sul rapporto fra diritto comunitario e diritto interno* ("Jus", 1/01, pp. 69-105). Indeed, the challenge put forward by the "procedural turn" is expressed by the above mentioned interconnection, in particular by the passage from a vertical (and linear) regulation to a horizontal (and reflexive) one.

Within the attempt to deal with this challenge, the research will be oriented, on the one hand, towards the analysis of the different devices for the regulation of collective action presently elaborated at the European level in order to cope with the crisis of traditional forms; on the other hand, towards the theoretical analysis of conditions and limitations of the different deliberative approaches that support these devices. These orientations, at the typical epistemological level of the theory of judgement, will lead to study the question of conditions for possibility of an institutional criticism able to influence the social dynamics in order to transform them. Therefore, we will start from the denunciation of the inadequateness – for different but specular reasons – both of the approaches linked to theory of social systems and of the several expressions of deconstruction at a legal and political level. This will allow us to deepen an analysis already set by Andronico in the following works: *La superficie del potere. Figure del postmoderno*, in "Jus", 2/02, pp. 241-286; *La decostruzione come metodo. Riflessi di Derrida nella teoria del diritto*, Giuffrè, Milano, 2002; and, in particular, *La disfunzione del sistema. Giustizia, alterità e giudizio in Jacques Derrida*, Giuffrè, Milano, 2006.

5) Crisis of Regulation and New Models of Subjective Identity. This research line, laid down within Salvatore Amato's works, has been inspired by scientific developments and new horizons connected to biotechnologies. These processes have produced, *inter alia*, the crisis of the typical imperative law of the Nation-State. In particular, through this research perspective we mean to underline how the development of case-law concerning the brevets on living beings, shows a change of the relationship between human identity and law. Obviously, judges decide on the "having" but they also influence the "being", the way of conceiving the relation between man and body. Therefore, we have a bio-jurisprudence that, through sentences, produces rights, creates expectations, and defines models. Indeed, we have to deal with a praxis imposed within markets and established by tribunals. Against that praxis it is not possible to have an effective

opposition from the weakest subjects. Therefore, it is important to underline some tendencies, at least. We should be aware that if the body is not anymore a sure and univocal datum, we could be forced to substitute naturalistic ties with dispositive possibilities. From this tendency we could extrapolate five models of qualification that we can read through a horizontal line of progressive dogmatic awareness: *Property* ↔ *Identity* ↔ *Information* ↔ *Health* ↔ *Energy*. Within property we should distinguish between the body “pertinence”, the body as *res nullius*/rubbish, the body for destination, the body as protected good. From these models of legal qualification four possible models of identity come out.

Personal identity. It entails the traditional naturalistic view (expressed in Italy by article 5 of the Civil Code) of the psycho-physical identity as a fundamental element of human person’s uniqueness.

Narrative identity. The Self is beyond the body but is expressed by the body. The principle of self-determination is thus the key for the legitimation of subjective identity. The legal relevance of the body is not anymore comprised within article 5, but within the set of constitutional norms that link health right with freedom right and individual autonomy and so with the idea that the individual has got about himself and his existence.

Social identity. The relationship between the self and the body is a variable and changeable social construction. The body is a group of parts, but there is a plot, a meaning that society expresses and determines.

Managerial identity. That is the view that mostly reflects the reductionist model: the identity is biography, biography is biology, biology is chemistry and chemistry is the language that we choose to attribute to things in order to read and interpret the world.

As already mentioned, these issues have been preliminarily developed in S. Amato, *Biogiurisprudenza. Dal mercato genetico al self-service normativo*, Torino, Giappichelli 2007. Single aspects have been analysed in several essays; among the most recent see: *La biodiversità è un valore?* in “Annali del Seminario giuridico” 2007, pp. 329-340; “Già e non ancora”: *la filosofia giuridica delle scienze ambientali*, in L. Marini, C.M. Dacon (a cura di), *Per un rinnovato sapere delle scienze ambientali. Scienza e etica dell’ambiente nel terzo millennio*, Franco Angeli, Milano 2005; *Scienza e democrazia. Il futuro ha bisogno dell’uomo?* in B. Montanari (a cura di), *La possibilità impazzita. Esodo dalla modernità* cit.; *Diritti fondamentali e “governo” della scienza*, in B. Montanari, A. Andronico (a cura di), *Scienza e normatività. Profili etici, giuridici e politico-sociali*, Scripta-web, Napoli, 2006; *Scienza tecnologia e diritto*, in B. Montanari (a cura di), *Scienza tecnologia & diritto (ST&D)*, Giuffrè, Milano 2006.