

Drugs and free personality development, a new violence, distorting what it should be

Drogas y libre desarrollo de la personalidad, una nueva violencia, distorsionando lo que debe ser

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<https://doi.org/10.36105/mye.2020v31n2.04>

Abstract

We are in a distortion of what must be done, so we want to create violence under the totem of freedom and autonomy, which is reflected internally (Mexico) as international, under the justification of the free development of human personality, a situation that creates a dystopia of the new human freedom.

Keywords: violence, free personality development, freedom, drugs.

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Reception: November 22, 2019. Acceptance: January 12, 2020.

I. Introduction

*The purpose of the state is, on one hand,
To enable and conduct the good life as a whole,
Which is not established and defined by the state itself.
On the other hand, preserve the conditions of that good life.
Moreover, to preserve those conditions is what the state itself decides.
That is the meaning of sovereignty.
(Aristotle)*

There are things that never disappear. Among them is violence; its form of appearance varies according to the social constellation. Currently, Byung Chul Han¹ points out to us, mutates from visible to invisible, from frontal to viral, from direct to mediated, from real to virtual, from physics to psychic, from negative to positive, and retires to subcutaneous, sub communicative, capillary and neuronal, so that it can give the impression that it has disappeared.

When it comes to coinciding with its counter figuration, freedom becomes invisible and material violence leaves room for an anonymous, de-subjective and systemic violence, which is hidden as such because it coincides with society itself.

Macro physical violence is usually more subtle, as it can be in language, through over communication and information. So much information makes the population run out of immune defense, without the ability to respond, leaving little freedom, since external repression inhibits the internal person.

Currently, violence suffers an internalization, it becomes more psychic and, with it becomes invisible. Not only does it unfold in an external, but internal, subjection, an internal constraint that appears under the shadow of freedom; Self-insubordination is more efficient, because it is coupled with a feeling of freedom. A self-aggressiveness develops, which is not rarely exacerbated and ends in the violence of suicide.

We have an inverted world; the true is a moment of the false. The spectacle is the affirmation of the appearance and the affirmation of all human life, that is to say social, as appearance,² many live under motivations of a hypnotic behavior and having autonomy and freedom as totems, without restrictions or balances in social responsibilities, breaking the harmony of relational coexistence and family and social life.

Within this disruption, self-destruction walks invading bioethics and its immediate passage to biojuristics, where laws lose their nature of being for the human benefit and human development, now under the jurisdictional demiurges of the Constitutional courts, a situation that I will address from Mexico.

II. Background

The National Institute on Drug Abuse of the United States of America states: «when a person takes drugs, they can become violent or angry. It (He/She) can harm itself (himself/herself) or harm another. Drug use can make people who are depressed feel worse, sometimes even so badly, that they may want to end their life. An overdose of drugs can kill.»³

In a historical spiral, we find ourselves again in a situation where repetitive conditioning of craving, clouds the will, of which losing the consistency (doing good and avoiding evil) of the law, and of all scientific evidence and ethical base and bioethics of human health, under the protection of a jurisdictional resolution.

When the court presented the first sentence that protected the recreational use, many people had the luxury of smoking in any public place. They were losing moral sense and common good, pointing out that the court had allowed it, and when it was specified that it would be only for those who presented the legal protection, a host of legal protections came cascading for the same purpose.

The jurisprudential effect was reflected in legal protections in revision 237/2014, 1115/2017, 623/2017, 547/2018 and 548/2018 of the index of the First Chamber of the Supreme Court of Justice of Mexico (SCJN). In there, the regularity of the norms, which define the activities and the legal uses allowed in the country, were controverted regarding the narcotics. The truly transcendent and objectively true, in this case, is that its enforcements convey that the constitutionality of some articles of the General Health Law were analyzed, exclusively in terms of the implicit prohibition that such regulations foresee only regarding of personal consumption of marijuana, against the right to free development of the personality that the governed have. Defining, based on the specific and proper characteristics of the mentioned narcotic, that such a prohibition in particular was not a measure proportional to the legitimate goods that the State intended to safeguard, namely, health and public order.

In the aforementioned judgments, the high court expressly established that the topic to be resolved was whether or not the use of marijuana is capable of affecting health and public order to such a degree that its prohibition turns out to be the only suitable measure to safeguard such values.

III. Analysis performed by the SCJN

From that premise of the first Chamber of the SCJN, various studies and scientific literature related to that specific drug were analyzed, highlighting, among other aspects:

- a) That the use of marijuana in adults does not pose a significant risk to health and, above all, different from other permitted substances such as smoking tobacco and even less harmful than alcohol.
- b) That it is a substance with a very low capability to generate dependence among its users.

c) That it has a very low incidence level in the consumption of other riskier drugs, such as heroin or cocaine.

d) That the available evidence allows affirming that marijuana by itself does not induce the commission of violent crimes, since its consumption tends to inhibit the impulses of aggression of the user, since it generally produces states of lethargy, drowsiness and shyness.

From all the foreseen, it was determined that the prohibition of personal consumption of marijuana for recreational purposes is unconstitutional, derived from being a disproportionate measure and, therefore, unjustified to safeguard health and public order, from analyzing its characteristics and effects on particular.

Situation that we find an expansion of freedoms and willfulness, of which that new freedom is barter in new coercions, without awareness of the real damages and evidenced from the current science which later on it will be specified, together with the effects that harm human health.

From the previous resolutions, the topic is expanded with cocaine use, to which, on August 20, 2019, a federal judge of Mexico City granted two legal protections that order the Federal Commission for the Protection against Sanitary Risks (COFEPRIS) to authorize the possession, transport, usage and use of cocaine⁴. Subsequently, in a revised legal protection, the collegiate court stated, «The objectively true is that it is a notorious fact that it is about substances considerably different. Thus, a) cocaine, unlike marijuana, is a drug produced by a previous chemical process, aspect that the same norm mentioned evidences when enunciating it along with its chemical name (benzoylecggonine methyl ester). b) It is the basis for manufacturing other narcotics. c) Unlike marijuana, its capacity to generate dependence is considerably greater, among other aspects; even, the high court itself described cocaine as a very risky drug, although it did not abound more on the subject or on the reasons that supported its assertion».

After declaring incompetent to know about the unconstitutionality of the matter and the collegiate court referred to the SCJN to hear about it, pointing out:

«Hence, what was solved it in such matters and, consequently, the jurisprudential criteria that generated, namely, the following jurisprudence 1st. /J. 3/2019, 1st / J. 9/2019, 1st / J. 10/2019 and 1st. /J. 25/2019 of items: *The right to free development of personality. The prohibition for the self-consumption of marihuana contained in the General Law of Health incides prima facie in the content of such fundamental right, absolute prohibition of the marihuana ludic consumption. It is not a proportional measure to protect the health and public order, unconstitutionality of the absolute prohibition to the ludic or recreational consumption of marihuana foreseen by the general law of health, and absolute prohibition of marihuana's ludic consumption. It is not a necessary measure to protect health and public order respectively*, not only they are not fit to resolve the regularity of the precepts fought for as regards to an alleged implicit prohibition of personal and recreational use of cocaine. Cocaine is a diverse narcotic whose characteristics and effects, in addition, are nothing similar to marijuana, even in terms of its importance and economic performance for drug trafficking, aspects and differences that are considered of particular importance to resolve on the specific issue subject to debate. Therefore, they reinforce the need for the SCJN to undertake to analyze the issue discussed because of its particular and notorious importance for both the legal system and, above all, for society, derived from the great problem what drug use means, as well as the controversy that this topic means to the community.

IV. The slippery slope of the free development of personality, exposed by the SCJN

Now, the free development of the personality, so raised in our time, is revealed as a missile, which ends against itself. In this

regard, it is worth referring, for argumentative effects, the most paradigmatic thesis on the subject:

*Right to free development of personality. The prohibition of the self-consumption of marihuana, contained in the General Law of Health, incides *prima facie* in the content of the fundamental right.⁵ This First Chamber understands that the fundamental right to the free development of personality allows, *prima facie*, that adult people decide without any interference what type of recreational or recreational activities they wish to perform, as well as carry out all necessary actions or activities to realize that choice. In this way, the choice of some recreational or recreational activity is a decision that undoubtedly belongs to the sphere of personal autonomy that must be protected by the Constitution. That choice may include the intake or consumption of substances that produce experiences that in some sense «affect» the thoughts, emotions and / or feelings of the person. In this line, it has been pointed out that the decision to smoke marijuana can have different purposes, including «stress relief, intensification of perceptions or the desire for new personal and spiritual experiences.» These experiences are among the most personal and intimate that anyone can experience, so that the decision of an individual of legal age to «affect» his personality in this way for recreational or recreational purposes is protected *prima facie* for the right to free development of this. (...)*

Situation that the Court as a legal demiurge, establishes an extension of freedoms so that all persons of legal age «18 years» tend to their free development of personality, under their sensitive appetites (desires and impulses) and not rational appetite (the intelligent will).

On the other hand, and returning to what was stated at the beginning, the mimetic rivalry, of wanting to possess what others want, is also the source of the new violence. Moreover, while prompting to legalize various drugs (opium and marijuana), justified to control the drug markets in Mexico⁶ and reduce existing violence, the promotion of addiction progresses invulnerable, losing more and more the otherness and strangeness of the social world.

In that sense, the State as a leviathan is only interested in resolving what is immediate. On one hand: a) consenting groups and people that boost their agendas and interests. b) Demanding through pseudo rights and freedoms. c) Justifying their desires legitimized by legislative transformations. As a result of the above losing the way to safeguard the health, personal integrity and human growth of their fellow citizens, under a liquid morality, which spreads in all directions affecting all the deontological operators (jurists, legislators, physicians, bioethics, health professionals, etc.) alienating its conscience, under harmful effects.

On the other hand, government institutions or bodies exalt themselves exuberantly, believing that they solve complex situations immediately and effectively. This in order to continue to have control of citizens, maintaining their privileges and canonries derived from the abuse of their public offices, ceased on the other hand, its structure of conscience. As a result affecting all people and in particular future generations and in the jurisdictional field, is invaded by legal veriphobia, where privilege is given to what pressure groups drive through social networks and individual interests, positioning what is convenient, when what you have to promote is the truth and prime justice.

V. Case analysis

It is noteworthy, that it is not the same to appeal to self-generated violence in the name of autonomy and freedom. In this case, the blameworthy is the driving individual who is responsible for fighting for the common good, which is usually time consuming and involves long-term efforts, not visible for their need of voters in an immediate way. As it was done in Iceland, where through very strict legislative reforms (*since 2002, the prohibition that anyone under the age of 16, may be alone on the street after ten o'clock at night, except for exceptional cases*) and public policies (youth in Iceland 1998) aimed

at young people (*extracurricular activities, such as sports, music, theater and dance*), after twenty years, alcohol consumption among young people was reduced from 42% to 5% and cannabis from 17% to 7%, changing from a vicious circle to a virtuous one, in co-responsibility of parents, their family, society, private initiative and government. The objective is to process the causes, strengthen protection and reduce risk factors.

In the World Drug Report of 2019, Antonino De Leo, representative of the United Nations Office on Drugs and Crime (UNODC, or UNODC) of the United Nations Office on Drugs and Crime, said that about 271 million people in the world used drugs in the last year. This represents 5.5 percent of the population aged 15 to 64, and 31 million had a disorder related to substance use, equivalent to 11 percent of drug users. In addition, 34.2 million people aged 15 to 64 used amphetamine-type stimulants; 18.2 million in the same age range used cocaine, and 34.3 million used opioids.⁷

Approximate figures of data regarding the use of drugs indicate that more than 16 million people in Mexico (23.5%) are smokers and 17.4% are former smokers. As far as the problem of consuming alcoholic beverages, it is known that slightly more than 22.7 million report as a preferred beverage to beer, 14.7 to distillates, 7.3 to table wines, 3.8 to «cooler» prepared drinks, and a minor proportion (2,400,000) ingests sugar cane spirits, pulque or alcohol at 96 °, which are more common in rural populations.

In Mexico, according to the analysis of the National Council against Addictions (CONADIC), just over 3.5 million individuals aged 12 to 65 years of age across the country have tried illegal drugs such as marijuana or cocaine, although in the Inhalation substances are also found that those that have a medical utility are consumed without a prescription. The relationship is overwhelmingly favorable for men: 3.3 for each woman, that is, 2,697,970 against 810,671.⁸

In the range of the Mexican population aged 12 to 65, the National Addiction Survey (ENA) indicates that between 2008 and 2011 increased from 3.9 to 5.7 million the number of people who consume illegal substances such as marijuana, inhalants, cocaine, heroin, amphetamine and other stimulants (without considering those for medical use). This means that, contrary to the objective of the General Assembly of the United Nations to achieve a free international society abuse of narcotics, use of illicit substances in the country increased two percentage points: from 5.2 to 7.2% over three years.

Likewise, the number of dependent people of drugs in Mexico increased from 450 thousand in 2008 to 550 thousand in 2011.

The age of risk of higher consumption of narcotic drugs, both legal and illegal, was also between 10 and 18 years of age, which is the target population of the Youth Integration Centers (ICJ); while the age of onset of consumption of any type of drug today ranges between 10 and 14 years.

During 2012, the ICJs actually received 24,728 users of illegal drugs, of which 42% were under 18 years of age.

Against this background, Nora Volkow shares that in the United States of North America the most recent study (2015) reports a decrease in the consumption of cocaine, methamphetamine, tobacco and alcohol, but «we see an increase in prescription drugs and of marijuana, which is currently one of the most severe problems».⁹

For its part, the Assembly of the World Health Organization, in its Resolution A70/29 dated March 27, 2017, states that «more than 450,000 deaths per year can be attributed to the use of psychoactive drugs. The morbidity burden attributable to drugs corresponds to 1.5% of the total morbidity burden, and it is estimated that the use of injectable drugs is responsible for 30% of new HIV infections outside of sub-Saharan Africa and contributes significantly to the epidemics of hepatitis B and hepatitis C in all regions».¹⁰

It is known that there are drugs of natural origin such as cocaine, opiates and cannabis and drugs of synthetic origin such as amphetamine-type stimulants, traditional and the so-called NSP (New Psychoactive Substances), which in the Glossary of the World Drug Report 2017,¹¹ are defined as «substances subject to misuse, either in their pure state or in preparations, which are not subject to control under the Single Convention on Narcotic Drugs of 1961 or the 1971 Convention, but which may pose a danger for public health. In this context, the term «new» does not necessarily refer to new inventions, but to substances that have recently begun to circulate. «To this group belong, for example, synthetic cannabinoids, the best known being Spice or K2.¹²

The use of drugs for medicinal purposes has been regulated, both nationally and internationally, establishing a catalog of lawful and illegal substances, as well as strict control in their production, distribution, import and consumption, whether for the cure or management of different diseases, or to relieve pain. Currently, a major reform is being carried out derived from the one made for medical use and derived from the resolutions of the aforementioned SCJNs, to include personal or recreational use.

On the other hand, a society governed by the hysteria of survival is a society of zombies, who are not able to live towards a truthful future. Drugs are sold with siren songs, on short-term proposals, without thinking of collateral damage or long-term negative effects, under a scheme foreign to the culture, values and reality of the country, because it is a palliative to reduce organized crime in drug trafficking with marijuana.

It should be noted, that part of the argumentation of the free development of personality, has a background in relation to the recreational consumption of marijuana and its related activities, where, the First Chamber (see page 41 of the first resolution) quotes a dissenting vote of 1972 by Judge Levinson to the judgment of the Supreme Court of Hawaii in the Hawaii State v. Kantner, as follows:

«The choice of some recreational or recreational activity is a decision that undoubtedly belongs to the sphere of personal autonomy that must be protected by the Constitution. This choice may include, as in the present case, the intake or consumption of substances that produce experiences that in some sense «affect» the thoughts, emotions and/or feelings of the person. [Vote citation] In this line, it has been pointed out that the decision to smoke marijuana can have different purposes, including «stress relief, intensification of perceptions or the desire for new personal and spiritual experiences» [Vote citation]. Thus, being «mental experiences», these are among the most personal and intimate that someone can experience, so that the decision of an individual of legal age to «affect» his personality in this way for recreational or recreational purposes, *prima facie* is protected by the right to free development of the latter [Vote appointment]».

On the other hand, there is also the history of Colombia, in reference to drug use, this right served as the basis for the permission of the personal dose, as well as for its decriminalization, determines the court, that such consumption is part of the individual self-determination.

«In other words, the legislator can prescribe me the way I should behave with others, but not the way I should behave with myself, to the extent that my behavior does not interfere with anyone's orbit of action (...). If the right to free personality development makes some sense within our system, it must be concluded that, for the reasons stated, the rules that make drug use a crime are clearly unconstitutional.»¹³

Thus, the First Chamber of the SCJN built the relationship of the ludic consumption of marijuana with the right to free development of personality and endorsed the dissenting vote of Judge Levinson in the isolated thesis of jurisprudence 1st. CCLX/2016 (10th.) Of heading: *Right to free personality development. The prohibition for the self-consumption of marihuana contained in the General Law of*

Health incides prima facie in the content of such fundamental right, previously cited.

This construction, gave rise to the examination of proportionality of the provisions disputed in which it was determined that the measure does have a constitutionally valid purpose. It was an ideal measure that seeks to protect health and public order, but the normative portions did not exceed the proportionality test, in the degree of necessity and proportionality in a strict sense, to prohibit administratively the exercise of this «right». Of this judgment, eight isolated theses of Jurisprudence were subsequently issued, with their due progressiveness and that each resolution has its own particularities.

However, to establish the free development of the personality, for the recreational use of marijuana and according to 18 years of age, which is the adulthood in Mexico, and emphasizing that each and every person has all their full capabilities and to be able to do what you desire and want, even against your personal health and integrity, is to live under a nineteenth-century scheme, for establishing that age in a decontextualized manner with current affairs and under scientific evidence.

Of which and, under the scheme of what the Inter-American Court of Human Rights (IA CCR) deals with under the principle of evolutionary interpretation, under which it affirms: «that human rights treaties are living instruments, whose interpretation has to accompany the evolution of current times and living conditions»¹⁴. Regarding the case at hand, the scientific information that objectively discloses the *status quo* of the common good must be gathered, which must broaden the spectrum of protection and hermeneutics, updating the pro persona principle (strictly speaking), which it has been generically identified with the effective protection of the person.¹⁵

To a greater extent, the American Convention on Human Rights, as well as the other human rights treaties, are inspired by

higher common values (centered on the protection of the human being), but not on simple claims.

As current scientific studies have shown that the brain of teenagers, especially the prefrontal cortex, ends up developing until 21-25 years of age.¹⁶ Research indicates that developing brains are much more susceptible to the negative effects of marijuana and other drugs,¹⁷ such as impulsivity, poor emotion control, poor decision-making, exposure to risk behaviors and unemployment.

Carried out over thirteen years, it was proven that the relationship between recreational use of marijuana at an early age and even people under 25 years of age with a significant increase in health problems for people over 25 and even in later years, such as they are respiratory problems, general malaise, neurocognitive problems, lower performance, and academic achievement.¹⁸ Proving that the stage of neurological development culminates between 25 and 26 years on the average.

Therefore teenagers with dependence, show short-term memory deficit, even after six weeks of withdrawal. The consumption of high amounts is associated with the presence of attention difficulties, slow motor activity and severe memory disorders. Other studies have shown that these effects in chronic smokers last beyond the period of intoxication and worsen over time by maintaining regular consumption. This favors poor academic performance with subsequent school dropout, unemployment, and economic dependence on family members, poor interpersonal relationships and individual dissatisfaction.

It is estimated that one in nine marijuana users will become dependent. Those who initiate consumption in adolescence, the risk of dependence increases presenting itself in one of every six consumers.¹⁹

The medical literature not only suggests neurocognitive disadvantages in the use of marijuana in the domains of attention and memory that persist beyond abstinence, but suggests possible macrostructural alterations in the brain (morphometric changes in

the brain's gray matter), changes in integrity of white matter tracts (poor coherence in white matter fibers), and abnormalities in neuronal functioning. The earlier the onset of use, the worse its prognosis.²⁰

Therefore, if you want to allow the use of marijuana in a manner coherent with scientific evidence, based on the free development of personality, you must first increase the majority of age and implement public policies such as those in Iceland. After harvesting, the virtuous effect that carry out the reforms that are considered pertinent, foster family cohesion and personal and social responsibility.

On the other hand, and by virtue of the responsibilities and knowledge of the effects of recreational use of marijuana or any other drug, under social responsibility and order, consumers who are fully aware, pay the consequences of its effects on their health care and insurance costs.

In response to the interdependence of human rights and their due protection, the State, must rather implement policies, programs and plans. These are necessary so that, respecting the free determination of people and the right to health, the information based on scientific evidence on the risks of psychoactive cannabis use in young adults be promoted, especially those over 18 and under 25 in order to inhibit their use.

Coming back to Aristotle: «All art, all research and, equally, all action and free choice, seem to tend to some good; for this reason it has been rightly stated that good is that towards which all things tend».²¹ In this frame of mind, the course should be straightened, with appropriate legal and harmonious policies and regulations with the common good and the healthy development of all people, under the protection of a State that cares for all its governed and in particular the childhood and future generations.

Emphasizing the free development of personality and in the definition of Emmanuel Kant, freedom does not mean the validity of any decision, but only of those rational and responsible, and

the latter term refers especially to decisions that do not cause harm to third parties.²²

In reference to the right to the free development of personality as a general right of personality from which the implicit fundamental rights arise and are involved, the German Constitutional Court has repeatedly mentioned:

«The fundamental right is attributed to the function of protecting the elements of personality, which are not the object of the special guarantees of freedom enshrined in the Fundamental Law, but which are equally important for the development and constitution of the individual's personality (cf. bVerfGE 54, 148 [153]; 99, 185 [193]). The need for full protection derives mainly from new threats that endanger personality development and that arise –most of the time– along with technical-scientific progress (cf. BVerfGE 54, 148 [153]; 65, 1 [41]). The subordination of a specific request for legal protection to the various aspects of personality law must be made in view of the dangers that threaten the personality and taking into account the specific circumstances of the case that motivates the conflict».²³

Regarding the scope and limits of this right, in a case concerning the use of narcotic drugs, the Court ruled that drug use cannot be protected under the right to the free development of personality, insofar as, within its limitations, the public interest is found, and such practice is harmful to public health, so the court concludes that a right to intoxicate does not exist for the following reasons:

«Art. Two, paragraph 1 of the Fundamental Law protects all forms of human action, whatever the respective activity for the development of personality entails (cf. bVerfGE 80,137 [152]). Absolute protection, and therefore the activity of public power, is restricted only to the sphere of private life configuration (cf. bVerfGE 6, 32 [41]; 54,143 [146]; 80,137 [153]). Hence, the drug trade cannot be counted within it, and especially personal consumption,

taking into account its multiple effects and social interactions. For the rest, the general freedom of action is guaranteed, exception made from the restrictions contemplated in the second half of the second sentence of paragraph 1 of Art. 2 of the Basic Law that enforces it, therefore, to respect the constitutional order (cf. bVerfGE 80, 137 [153]) (...). Such interference, in personal liberty is only admissible, in general, in the event that the protection of third parties or the common interest so requires. In accordance with the principle of proportionality, notwithstanding that such interventions may also be considered (under certain budgets), in order to prevent the person in question from inflicting serious personal injury on himself, (cf. bVerfGE 22, 180 [219]; 58, 208 [224 et seq.]; 59, 275 [278]; 60, 123 [132])».²⁴

In that intelligence, «every human act must have limits not to affect the other, limits that the law establishes as the last ratio, but as fundamental values in social coexistence are indicated by ethics and materialize in human rights».²⁵ Safeguarding also to the person and his personal integrity.

Acting in freedom is to consider the consequences, and accept responsibility for them. This act must be discriminated before and not later. In this guide, it is the responsibility of both the State and humanity itself to set limits and not affect third parties.

If the sense of the free development of personality previously established by the first room of the SCJN is deepened, two variants in moral relativism are updated, and are:

1. Every man must follow the dominant moral in the society in which he lives, and
2. Each one must follow his own whim and do whatever he wants.

As well as Pontius Pilate, they wash their hands, justifying the claim of those who protected themselves and not the pro persona principle (it benefits the human person more), as the German court argued.

What is at stake is the human person and the achievement of their true fullness or development. Because as Robert Spaemann has warned: «The abandonment of the concept of natural teleology came imposed, as it was said, for a fundamental interest, the interest in the submission of nature. For those who want to do with a thing anything they want, the question what he aspires for himself, this thing must become inappropriate».²⁶

VI. Assertive conclusions

*Evil is not a concept;
It is rather a name for the menacing;
Something that comes out as a stepping-stone
to free consciousness and that she can overcome.*
(Rüdiger Safranski)

From what we are noticing in our country, it is a concept of freedom that translates as *pure spontaneity or absolute autonomy*. It is a freedom without nature, rather, opposed to nature. An autonomy without limits that leaves the subject in an effective capacity to follow their own desires and support personal preferences without any type of restriction.

It is what is known in the field of contemporary political philosophy as «negative freedom», in an expression definitely enshrined by Isaiah Berlin, for whom freedom in this sense means, «to be free from interference beyond a variable, but always recognizable, borders».²⁷ Basically, what Berlin understands by negative freedom is nothing more than psychological freedom or free will...»²⁸

Now, to do what anybody wants, as long as it does not harm another, and so that the State should not interfere in individual freedom to protect a person from himself, or to impose what the majority believes it is the best way of living. A person has to be

accountable to society only when others are affected, as long as their independence of right does not affect anyone else. That independence is an absolute right over itself, his body and his mind, since the individual is sovereign.²⁹ It is a utilitarian structure established by J. Stuart Mill, same as for a democratic State of law under a support of human rights, which must work with adequate prudence for all people and not only focus on promotion of pleasure and pain prevention,³⁰ without assuming its consequences.

In this sense, it is proposed not to legislate on laws that protect people from harm they can do to themselves, as long as there are no third parties that are harmed, much less legislate on morals.³¹

On this particular analysis of the libertarian state, Robert Nozick points out: «You have to ask yourself what the State should do, if it should do something. He concludes that only a minimum State is justified, which is limited to enforcing contracts and protecting people from force, theft and fraud. Any State that goes beyond it will violate the right of people not to be forced to do certain things, and will not be justified».³²

From here it could be said, as Legaz Lacambra pointed out, that Law «is a point of view on justice only and insofar as it constitutes an order of social life and a security of the minimum conditions that make it possible». They are those conditions that have to be rational in search of the well-being of each person, being the State the guarantee of fundamental rights, such as life, personal integrity and health.

From the above it can be gathered that, the human *telos* constitutes a metaphysical-axiological reference from which it is possible to judge which vital options contribute to the development of personality and which options hinder and undermine it.

By virtue of its spiritual or rational nature, the person is openness,³³ which leads to a stream of interaction between the personal self and reality, in particular, with the personal you of other human beings. Such interaction will result, in many cases, in an increase in your being.³⁴

Just wanting to satisfy pleasures for wanting to be good with certain claims, to the detriment of his health and personal integrity, justifying that he will be happy and that no one can stop him, is how Socrates teases in Gorgias, the happiest man would have to be the one You always have scabies and can always scratch.

As a last reflection and as established by the Latin American Study Group on International Criminal Law related to the drug problem: «4. The use of criminal law as an instrument to deal with the drug problem must be guided by the principles of necessity and the *ultimate ratio*. Criminal law cannot be the prevailing instrument of States. Such a problem must be addressed in an interdisciplinary and comprehensive manner».³⁵ Therefore, criminalizing certain acts worsens the circumstances and further damages the social tissue, seeking a solution of the people held by the illegal carrying of marijuana based on a restorative justice program with its therapeutic variant, of which if there is, to analyze it carefully without affecting third parties. As far as bioethics is concerned, in its transdisciplinary level, it can provide the necessary and proportional tools, in the best decision-making in the bio-legal field, for the sake of relational coexistence.

Bibliographic notes

¹ CHUL HAN, Byung. Topology of violence. Herder; Barcelona, 2016.

² DEBORD, GUY. The society of appearance. Spain, Pre-texts, second edition; 2015, p. 40

³ National Institute on Drug Abuse; National Institutes of Health; Department of Health and Human Services of the United States of America. «Drug use and health». Available at: <https://easyread.drugabuse.gov/es/content/el-consumo-de-drogas-y-la-salud>. <https://doi.org/10.1590/s1020-49891998000100011>

⁴ Court will review case of playful use of cocaine. Available at: <https://www.ex-celsior.com.mx/nacional/corte-revisara-caso-de-uso-ludico-decocaina/1335416>, 11-11-2019.

⁵ 1st. CCLX/2016 (10th.). First Hall Tenth Period. Gazette of the Judicial Weekly of the Federation. Book 36, November 2016, p. 897.

⁶ MOLINA GERMAN. The Legalization of drugs in Mexico. Milenio, 08-11-2013 (03-04-2019). Available at: <http://www.milenio.com/opinion/german-molina/opinion/la-legalizacion-de-las-drogas-en-mexico>

⁷ The 2019 World Drug Report is presented in Mexico, July 17, 2019. Available at: <https://www.gob.mx/salud/prensa/227-se-presenta-en-mexico-el-informe-mundial-de-drogas-2019> <https://doi.org/10.18356/1730c5b8-es>

⁸ The map of addictions in Mexico can be found at: <https://saludymedicinas.com.mx/mamas/jovenes/estadisticas-del-consultmo-de-drogas-en-mex>

⁹ Panorama of addictions in Mexico, by LORENA Ríos. 12/05/2016. Available at: <http://www.vertigopolitico.com/articulo/43443/Panorama-de-las-adicciones-en-Mexico> . <https://doi.org/10.20882/adicciones.663>

¹⁰ 70th World Health Assembly A70 / 29, dated March 27, 2017. The public health dimension of the world drug problem, p. 1. (11-11-2019). Available at: http://apps.who.int/gb/ebwha/pdf_files/WHA70/A70_29-sp.pdf . <https://doi.org/10.1590/s0864-34662008000100003>

¹¹ United Nations Office on Drugs and Crime, World Drug Report 2017 (ISBN: 978-92-1-148291-1, and ISBN: 978-92-1-060623-3, United Nations publication United, Sales No. S.17.XI.6). (05-02-2019). Available at: <https://idpc.net/es/publications/2017/06/informe-mundial-sobre-las-drogas-2017>.

¹² Idem.

¹³ UNODC. The 2019 World Report on Drugs calls for increasing resources in order to enhance prevention and treatment of drug consumption. July 2019 (10-11-2019). Available at: https://www.unodc.org/mexicoandcentralamerica/es/webstories/2019/Informe_Mundial_Drogas_2019_Mexico.html <https://doi.org/10.18356/1730c5b8-es>

¹⁴ Constitutional Court of Colombia, judgment C-221/94. May 5, 1994.

¹⁵ See, for example, I / A Court HR, Case of the Mayagna (Sumo) Awas Tingni Community vs. Nicaragua (Merits, Reparations and Costs), Judgment of August 31, 2001, series C, no. 79, paras. 146-148. IDH, / A Court HR, Case of the Yakyé Axa Indigenous Community v. Paraguay (Merits, Reparations and Costs), doc. cit., for. 125; and I / A Court HR, Case of the Mapiripán Massacre v. Colombia (Merits, Reparations and Costs). Judgment of September 15, 2005, series C, no. 134, for. 106. <https://doi.org/10.22201/ijj.24487872e.2011.11.362>

¹⁶ IDH / A Court HR. Case 19 Merchants vs. Colombia (Merits, Reparations and Costs). Judgment of July 5, 2004, series C, no. 109, par. 173.

¹⁷ ARAIN, MARIAM, ET ALT. Maturation of the adolescent brain, Saint James School of Medicine, Kralendijk, Bonaire. The Netherlands, press journal: *Neuropsychiatric Disease and Treatment* 2013; 9:449-461 (11-11-2019). Available at: [/10.2147/NDT.S39776](https://doi.org/10.2147/NDT.S39776).

¹⁸ GIEDD, J. N. Structural magnetic resonance imaging of the adolescent brain. *Annals of the New York Academy of Sciences*, 2004; 1021, 77-85. (11-11-2019). <https://doi.org/10.1196/annals.1308.009>

¹⁹ BROOK, J. S., STIMMEL, M. A., ZHANG, C., & BROOK, D. W. The association between earlier marijuana use and subsequent academic achievement and health problems: a longitudinal study. *The American journal on addictions*. 2008; 17(2): 155-160 (11-11-2019). <https://doi.org/10.1080/10550490701860930>

²⁰ WAGNER, F.A. & ANTHONY, J. C. From first drug use to drug dependence; developmental periods of risk for dependence upon cannabis, cocaine, and alcohol. *Neuro psychopharmacology*. 2002; 26: 479-488 (11-11-2019). Available at: [https://doi.org/10.1016/s0893-133x\(01\)00367-0](https://doi.org/10.1016/s0893-133x(01)00367-0)

²¹ JACOBUS, J. AND TAPERT, S. Effects of cannabis on the adolescent brain. *Curr Pharm Des*. 2014; 20:2186-2193 (11-11-2019). <https://doi.org/10.2174/13816128113199990426>

²² ARISTOTLE. Nicomachean Ethics, book I. 1094a, 1-3.

²³ The great traditional argument for freedom is the existence of moral responsibility, for the same reason that «duty» implies «power.» Everyone, deterministic and in deterministic, agrees that only if man is free is he also morally responsible for his actions. <https://doi.org/10.4272/978-84-9745-477-3.ch1>

²⁴ Constitutional Court of Germany, BVerfGE 101, 361 (Carolina of Monaco II), December 15, 1999.

²⁵ German Constitutional Court, BVerfGE 90, 145, March 9, 1994.

²⁶ HERRERA FRAGOSO, AGUSTÍN ANTONIO. The legalization of Marijuana, after the resolution of the SCJN, ETM and ANAYA, 2016.

²⁷ SPAEMANN, ROBERT. Philosophical essays. Madrid, Ediciones Cristiandad, trad. L. RODRÍGUEZ DUPLÁ, 2004, pp. 27-28. Cited by IRIZAR, LILIANA BEATRIZ. Human nature: Obstacle or guarantee of the free development of personality? *Díkaion*, Year 25-Vol. 20, No. 2, pp. 279-297. Chia, Colombia, December, 2011 (10-05-2019). Available at: <http://www.redalyc.org/articulo.oa?id=72021402004.p.287> <https://doi.org/10.5294/dika.2011.20.2.3>

²⁸ BERLIN, ISAIAH. Two concepts of freedom. Madrid, Alliance, trad. A. Rivero. 2001, p. 54. Quoted by IRIZAR, LILIANA BEATRIZ, «Human nature...» p. 288.

²⁹ Theological Sum. I, q. 82. Cited by IRIZAR, LILIANA BEATRIZ, «Human nature...» p. 288.

³⁰ STUART MILL, JOHN. On freedom. Alliance, Madrid. 2009, chap. one.

³¹ STUART MILL, JOHN. Utilitarianism. Alliance, Madrid. 2007, chap. two.

³² J. SANDEL, MICHAEL. Justice Do we do what we should? Liberalism, Debate. Spain; 2011, p. 73.

³³ NOZICK, ROBERT. Anarchy, State and Utopia. Economic Culture Fund. Mexico; 1988.

³⁴ STEIN, EDITH. The structure of the human person. Madrid, BAC, trad. J. Mardomingo. 2003, p. 136. Cited by IRIZAR, LILIANA BEATRIZ, and «Human nature...», p. 290.

³⁵ STEIN, EDITH, *op. cit.*, p. 137. Cited by IRIZAR, LILIANA BEATRIZ, and «Human nature...» p. 290.

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³⁶ CEDPAL AND KONRAD ADENAUER STIFTUNG. Declaration of the Latin American Study Group on International Criminal Law in relation to the drug problem. October 2015, p. 2, (10-05-2019). Available at: <http://cedpal.uni-goettingen.de/data/investigacion/GLEDPI/SeminariosGLEDPI/DeclaracionDrogas.PDF> <https://doi.org/10.18356/e6c12c5e-es>