

## Editorial Note

Alberto Puppo

*Nous finissons toujours par avoir le visage de nos vérités*

(Albert Camus, *Le mythe de Sysiphe*, 1942)

*Isonomía's* new number, 52, arrives, like the previous one, amidst the Covid-19 pandemic. The measures discussed and adopted, in many countries, to curb the devastating effects of this health crisis have triggered major philosophical and political reflections, often reliant on Michel Foucault's well-known biopolitics or Carl Schmitt's equally well-known views on the state of emergency.

From the editorial point of view of a journal devoted to legal philosophy, it would be tempting to dedicate a special issue to these pressing questions. However, as those with editorial experience know it, it is highly complicated to ensure a topical new issue that simultaneously meets the quality requirements, and tempo, of the "double-blind peer review process". In any case, and beyond the above-mentioned questions, the pandemic confronts us with two fundamental issues that, fortuitously, are important to the issue we are publishing: body and truth. If one wished to be rhetorically more ambitious and polemical, one could say: the body's truth and/or truth about the body.

The body appears as the protagonist in two texts researching it in its two extremes: the "encaged body" (in a prison) and the "missing body". Two strikingly opposing phenomena come to mind: next to the everyday dimension of corporeality – bodies that move freely, bodies that can be observed in thousands of social interactions, bodies that are also digitally monitored – we can also observe bodies, whose whereabouts are unknown – the disappeared – and bodies whose whereabouts are, on the contrary, known but non-autonomous – bodies deprived of freedom.

The problem raised by truth, when referring to the body, is rather obvious when it comes to the missing body: the right to truth has been enshrined precisely in the context of the search for missing persons, although it should be said, more correctly, search for bodies and their remains since often this is all we expect to find. But the same happens with the encaged body. While the latter exists and can be observed, it becomes an effect of the prison system, a martyr. This splits body and person since while the body is preserved and conserved, the person – especially subjects perceived to be different – inhabiting the body risks disappearing, at the hands of normalizing and thus inherently discriminatory rules.

The texts by Gerardo Contreras Ruvalcaba and Sévane Garibian coincide, again fortuitously, in their dialogue with criminal procedure. In the former, insofar as the confinement of the bodies is the end point of a criminal process. In the latter, because the institutions, national or international, created for truth-searching about missing bodies, have questioned the efficiency and capabilities of the traditional criminal system in producing truth.

The criminal process, regulated by rules of evidence and informed by a set of human rights and guarantees, seems to be deficient when it comes to discovering the truth. For example, in the case of serious human rights violations, while the criminal procedure may end with the conviction of those responsible, this does not guarantee per se that the truth about the crimes committed, in particular the truth about the victims, will be obtained. The all too convenient expression “procedural truth” has conquered a place in the vocabulary of criminal law experts, precisely to highlight this humble purpose that the criminal process imposes on itself, especially, more so in accusatory systems. In these, the criminal process does not aim to establish historical truth – what really happened – but only the truth internal to the process. As such, institutions outside the criminal justice system, those not entrusted with the task of creating individual punitive rules, have the clear advantage of not being subject to the traditional set of procedural rules, for example on obtaining illicit evidence, giving them access to a wider range of tools.

Two related texts by Gabriel Pérez Barberá timely probe deeper certain ideas, widespread among experts in the field, on the relationship, in criminal proceedings, between evidence and truth. In the author’s opinion, despite the normative and cognitive obstacles to access and discover historical truth, the latter maintains a necessary epistemic connection with evidence. Insisting on the fundamental role played by truth

in the procedural game, may perhaps narrow the gap that separates the functioning of criminal jurisdictions from that of the various institutions created to seek the truth. It is worth emphasizing that despite the temptation of moral relativism, on the one hand, and epistemological skepticism, on the other hand, the relationship between law and truth – as shown in the monumental work directed by my dear colleagues Jorge Cerdio and Germán Sucar – will not cease to keep us awake at night.

Truth worries us regarding not only facts but also values. It is perplexing, in the context of the current massive violations of human rights, that several authors still insist on the idea of inviolable universal rights without questioning their political feasibility. One of these proposals, that of Luigi Ferrajoli, comes under attack in the article by Albert Noguera, that allows us to broaden the discussion on body, truth and the law while providing an inspiring way to end the editorial. The author points out the difficulties of Ferrajoli's political project of *garantismo* (i.e. a concept that grants priority to guaranteeing human rights – the suffix *ism* stating that this priority often comes at the expense of other important values) but such difficulties probably extend to all political projects based on a conception of human rights that is both universal and abstract. The universal and abstract principles of justice – as in one of the most influential theories of justice, that of John Rawls – could be said to fail the test of the body, i.e. of corporeality. If the person is, according to a widespread conception, the holder of fundamental human rights, the body is, perhaps, the recipient and deposit of human suffering. Such a remark takes up perhaps one of the sharpest critiques ever formulated against the liberalism of Rawls' theory of justice. For Michael Sandel, the person who is the main character – as author and beneficiary – of Rawls' principles of universal justice, is but a disembodied subject, an *unencumbered self*. Taking such an expression at face value, we can say that the subject of human rights is then a subject whose body is irrelevant, whose suffering, as an individual body – locked up, disappeared or simply marginalized – disappears in the background, hidden by the luminescent screen of her complete set of rights as fundamental as abstract and impalpable.

Noguera's critical reflection therefore invites us to return to the penitentiary construction, an emblem of the insufficiency of the most enlightened political projects – in the double sense of “inspired by the Enlightenment” and “cultured and educated” – an insufficiency that is not contingent, that is, due to a low degree of implementation, but rather structural, due to its dependence, in a metaphysical sense, on a conception of the human being that has constructed equality, or belonging to the human family, on the basis of the denial of individual and collective corporality.

Individual corporality, as George Canguilhem, Michel Foucault's mentor, taught long ago, is primarily biological, which constrains us to take a critical stance on the biological truths established by the governmental systems that administer public health. Perhaps unsurprisingly, this editorial comes full circle ending where it began: the current pandemic highlights difficulties in measuring and regulating on the basis of previous measurements a complex situation in which bodies are submerged under the crossfire of biological suffering, i.e. the attacks of the virus, psychological suffering, i.e. forced confinement, and social suffering, i.e. the vulnerability arising from the combination of the first two sufferings.

*English version by Guilherme Vasconcelos Vilaça*