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Gallego Pérez de Sevilla, Francisco de Borja
CES Cardinal Cisneros UCM,
lecturer

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The abolition of law and the triumph of legislation*

ABSTRACT:

This paper aims to analyze the process of displacement and eventual abrogation of Law in favour of new artificial legal formulas characteristic of statist formal law, which we call legislation. Legislation unfolds as a mechanism of imputation or as a formal attribution with a condition of possibility, detached from the ordering concept of Law originally oriented toward the attainment of the common good. Rather, legislation is structured as a logical and self-referential mechanism presenting a twofold problem: first, it subjects the idea of legitimacy to the legal order, generating artificial and mutable legal ontologies; second, the only exit from the system is another configuration programmed by itself: Law as a performative representation that discretionarily assigns fabricated realities, operating as false legal ontologies that are entirely changeable. Moreover, by logical extension, this condition of possibility must necessarily rest upon the evanescence of the will, identified with freedom. The act is postponed, and in its place the potential triumphs. Within this structure, the will like morality plays a dual role: as the origin of every order or prescription, and as the final receptacle of the mandate, thus shaping a dynamic of power that is invariably personalist. This paper argues the hypothesis that juridical Modernity, in its most entrenched form, has lost the compass of Law, vindicating the urgency of revitalizing Law from its ontological dimension, restoring it to its being and returning its substance. If statist legality scrutinizes existence by presuming itself moral through self-resolution and self-legitimation, Law must stand as the last bastion of freedom, with all its force and dynamism, seeking its legitimacy beyond the ever-changing social and political transformations.

KEYWORDS: Law, legislation, voluntarism, State, Modernity, legality, legitimacy

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Introduction

The fact that law has become the receptacle or repository of morality, because morality has been reduced to what is potentially imputable, and given the infinite imputability proposed by subjective law – which in turn deals with a multiplicity of infinitely imputable subjects – does not mean that law is in itself moral, or that, failing that, it pursues moral ends. The wake of nominalism is long, and if one thing was clear to Ockham, it was that the purpose of the command is not itself moral – fnor immoral – but indeterminate with respect to its horizon, not necessarily its primary or remote causes. Precisely because this teleological amorality implies a strong theological morality, modern law is constructed as an extension of the will, which understands itself as moral because it constitutes a mandate, once divine, still theonomous in its radical origin.To assert that the moral autonomy of law is an update of the *potentia absoluta dei* is probably already a cliché, but it must serve to verify that modern legal systems are crammed with theological invocations which, paradoxically, shift in favor of a completely de-theologized law.

The formula is theoretically simple, since the conjuration of a legislative power that transcends the ordinary order to exchange it extraordinarily can only be placed on the altars formerly reserved for the divine, now clearly politicized by the neutralizing dynamics of the state itself. If the law then becomes an instrument at the service of a personalistic power and is removed from any approximation of a transcendent sense of good, since it is no longer moral in its purpose but exclusively in its origin as imputed, it loses its ultimate meaning, finally transmuting into something else, which is what I call legislation. It is worth remembering that this operation, through which law was relegated in favor of legislation, is not recent, but began to take shape in the light of the projection of statehood onto the European space, which played to the detriment of the sense of universality proper to the *res publica christiana*. A concept that was more metaphysical than political, but which had nevertheless dominated the West for centuries during the Middle Ages until the emergence of state particularism, which became sociologically consolidated in the 17th century[1]. Particularism, which is an extension of modern sovereignty[2] invented by Bodin in imitation of papal *summa potestas*[3], understands the state as a closed and monistic political unit, fictitiously (self-)limited by artificially manufactured borders, the result of the geopolitical and strategic conveniences of the states themselves. If law ceases to have a universal reference and becomes a purely political matter that concerns only the limits of sovereignty, it seems logical that the next step would be to do away with the objective notion of law, finally replacing it with arbitrary state legislation[4]. Probably the main precedent for the rejection of the classical notion of law

[1] It is worth recalling here the famous ruptures caused by the state, as pointed out by Elías de Tejada. The sociological rupture following the Peace of Westphalia in 1648 ultimately succeeded in abolishing European unity in favor of the particularism of states that adopted their own religious confessions.

[2] For the concept of sovereignty, we refer to a previous work: "For Modernity, power arises from the very bowels of the world and is placed on the altars of politics with no extrinsic mediation other than the will of those who arbitrarily exercise sovereignty; which reformulates the theological power of divinity by concentrating authority and power under a single notion, whose mission is to artificially and rationally replicate the idea of the Absolute. Sovereignty, which takes on the character of a political miracle, is providentially administered through the constant and capricious oscillations of state legislation, thereby closing off the modulation demanded by the intermediate bodies existing under a government limited by law and custom. This ultimately postpones political freedom, the banner of the Western liberal tradition. Gallego, Francisco de Borja, *Las religiones políticas: sobre la secularización de la fe y la sacralización del mundo*, Madrid, Thomson Reuters Aranzadi, 2021, 13.p.

[3] Dalmacio Negro points out that the key to modern sovereignty lies first in the confusion between *autoritas* and *potestas* and, second, in the subsumption of legal power under the executive. Negro, Dalmacio, La tradición de la libertad, Madrid, Unión Editorial, 2019, 56.p.

[4] In this regard, Dalmacio Negro also recently pointed out in a communication that "the fundamental rules of the order created by God of *potentia ordinata*, the ius naturae, known and discovered through customs, began to be replaced by law legislated by monarchs, public law that ended up giving primacy to positive law, placed above the human legislator, over Natural Law." The intervention is included in NEGRO, Dalmacio, <<La agonía de la cristiandad>>, Cuadernos, (Dir. Elio Gallego), Madrid, CEU-CEFAS, 2022, 60.p.

in favor of legislation can be found in Hobbes, who had interpreted natural law in rational terms[5], giving his Leviathan a univocal legal structure representing divine will. Hobbes's main concern, as is well known, was the neutralization of conflict, rather than the moral question of the state, reduced to its famous religious minimum. Nevertheless, despite their differences, Hobbes' ideological horizon aligned very well with that of Luther and his Augustinian exegesis, centered on condemnation and salvation in this world, since at this point the state began to acquire a soteriological role[6], despite not yet being fully secularized.

Under this premise, peace in the state was only possible through the temporal weight of the law, hence the unbreakable formalism of the political order, representing the divine order. This univocism, detached from the contractualist political-legal theory, is a good indication that law was beginning to be formulated under a rationalist rigor, which is underpinned by a moralizing dimension given its efficiency-based causality. This constitutes, in my opinion, a prolegomenon to the positivism of later centuries. In this regard, Dalmacio Negro understands that the process by which law and politics became artificial constructs, such as the politicization of substance[7]. A process of political invasion of the legal and social spheres, which not only directly affects law, but also the anthropological order as a direct consequence of secularization and the intramundane closure of reality[8]. In the religious sphere, secularization also constituted a process of politicization of the spiritual, with the state arrogating to itself the ownership of morality in the public sphere, something I will discuss further below.

Without going any further in this section, this paradigmatic example from Hobbes is sufficient to demonstrate that pactism initiated an inevitable process of loss and emptying of the substance of law. The result is the abrogation of the ontological dimension of law itself, a recurring theme in the study of legal modernity, but no less substantial for that, since only after the closure of the ontic plane of law can its demise be inferred. Once law has been stripped of its transcendent link via *ex natura rei*[9], legislation appears, which is a simple technical apparatus at the service of the *ratio status*; a formal invocation or *representation* as an extension of the will of the one who prescribes the mandate.Thus, everything is virtually attributable to being discreetly understood by the will, the dwelling place of morality as a translation of God's will under theological efficiency, that great scholastic principle hijacked by Modernity. However, the constellation of this modern right, transformed into state legislation, requires an unavoidable condition of potentiality in the modal form of its attributions. All the attributions made are essentially possibilities, which take on a univocal character after the relevant resolution via scholasticism under the closure of a logical[10] and theological order that effectively takes the form of the State, whether proclaiming it as a mere union of wills, a machine (Hobbes), a *corpus mysticum* (Suárez), or a composite moral body (Pufendorf).

The truth is that the vicarious power of absolutist kings, still clinging to a theonomic explanation of the political order justified by the divine right of kings, paved the way for future ideological thinking that would understand law not even as an instrument at the service of spiritual morality, but as a factual instrument designed exclusively for the execution of the political power of the State. However, this did not prevent the law born of the Enlightenment from essentially carrying a moral sense in its Promethean

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[5] "If Protestantism is the search for the maximum spiritualization of faith, in a strongly Augustinian sense, in Hobbes we find the maximum politicization and worldliness. If for Luther everything is supernatural, for Hobbes everything is political and physically explainable." Gallego, Elio A., *Autoridad y Razón: Hobbes y la quiebra de la tradición occidental*, Madrid, Center for Political and Constitutional Studies, 2016, 83.p.

[6] "The truth is that the 'heavenly city' and the 'earthly city' had been understood by St. Augustine eschatologically; but they became increasingly identified with the ecclesiastical institution and the secular state respectively, entrusting the Church with representing the 'heavenly city', even in the political sphere, and with shaping the state as the ultimate authority." Corral, Salvador, *Teología Política: una perspectiva histórica y sistemática*, Valencia, Tirant Humanidades, 2011, 128. p.

[7] Negro, Dalmacio, *El mito del hombre nuevo*, Madrid, Encuentro, 2009, 55. p.

[8] Reality – a formalization of the real – becomes abstract and immanent, subject to the emergentism of subjective law linked to the absolute will of the individual, which operates by way of exception, discreetly imposing a new reality, which at the same time ontologizes being as legally codifiable by the power, also absolute, of the State.

[9] On this question, it is always useful to refer to Muralt De, André *La estructura de la filosofía política moderna: sus orígenes medievales en Escoto, Ockham y Suárez*, Madrid, Itsmo, 2002, 54-55. pp.

[10] This is not so much the case with Ockham, who understood that the will of God, being absolute, should remain outside any order.

goal of eradicating evil from the world, a kind of secular reflection of sin and the desideratum of utopian-revolutionary thought.

I. The defeat of law

These intellectual shifts led to the construction of a purely statist legality, understood in terms of positive law. A conceptualization of the legal that is merely performative, and whose accountable subjects are nothing more than discrete individuals, waiting to be filled by a modal attribution, that is, by an imputation. This maneuver, the result of a long process of breaking down the previous legal-political order, would reach its peak after the ontologization of Hegel's state and the subsequent triumph of Kelsen's formalism, opposed to natural law. To differentiate it from statist legality, it is worth making a brief reference to the classical concept of law, insofar as it is a legacy of Aristotelian-Thomistic philosophy. According to this understanding, law is due to a transcendental union between what is just – what is right – and the idea of good. Furthermore, in the Middle Ages, law fulfilled a social function by constituting itself as a secondary body that served as a bastion of defense of political freedom against the abuses of temporal power[11]. According to this classical notion, which is enshrined as the philosophical fabric of the Western legal tradition, law must focus on the search for truth through the measuring rod of justice. This is nothing more than the concretization of the universal value of justice, interpreted through the analogical virtue of prudence[12], which gives rise to jurisprudence[13]. For Álvaro D'Ors, such jurisprudence confirms the existence of law itself through the interpretative prudence of judges[14], since it obeys precisely that intimate relationship between the judicial faculty to distinguish what is feasible and advise what is good[15] – Aristotelian phronesis – as an intellectual virtue, that is, judgment or *iusdicium*; and the concept of ius as a specification of justice as a cardinal virtue, which is essentially moral because it is relative to the good, an expression of Truth in the world.

Therefore, according to this conceptual scenario, the purpose of law is to organize the common good and achieve the greater good, as I will explain. However, the fact that the purpose of law is rooted in goodness and that its formal structure is based on the pursuit of justice – through the recognition of the rights of others – does not mean that law is inherently moral[16], a vice inherited from the Reformation, whose corollary is secularization. Protestant theology moralized law in its political battle against sin, to preserve the spiritual from the disruptions caused by the temptations of the temporal world. This formula ultimately resulted in the confinement of faith to the private sphere, as it was reserved for the intimacy of conscience. Paradoxically, law took the form of an instrument for the sanitization of society. In this sense, the state aspired to be a perfect society in imitation of Church[17], as it was conceived in eternal struggle against evil. An imprint that, as I announced earlier, was later taken up by ideology, especially

[11] Negro, Dalmacio, *Historia de las formas del Estado: una introducción*, Madrid, El buey mudo, 2010, 11-12. Pp.
[12] "Prudence is the virtue that allows us to recognize what is good in concrete terms, here and now (...) Prudence not only knows what is good in concrete terms but also prescribes its fulfillment. In this sense, prudence is not only an intellectual virtue, but also a moral one (...) Since prudence is the "measure" and "mandate" of human (actionable) behavior, it is, consequently, the "measure" and "mandate" of all moral virtues, including justice." Gallego Elio A, *Tradición Jurídica y Derecho subjetivo*, Madrid, Dykinson, 1996, 63-65. pp.
[13] "The jurist is the one who <<sees>> - prudence derives etymologically from seeing (*pro-videntia*) - what is most just in each case. Hence, only a just and prudent man can be a true jurist, particularly in the case of the judge, who has the highest function of the jurist, *iurisdictio*, that is, to say the ius, to declare what is just." Gallego, op. cit. 64. P.
[14] "Thus, there is no law where there are no judges to pass judgment. And to know what the law is at any given time and in any given place, one need only look at what the judges declare. That is why law can be defined in these terms: <<law is what judges approve>>." D'ors, Álvaro, *Una introducción al estudio del Derecho*, Madrid, Rialp, 1963, 14. p.
[15] D'ors, op. cit. 114. p.
[16] It could be said that Modernity is the realm of morality. From law to politics, all abstractions and ideas, that is, formal constructions, become receptacles of morality via imputation. Pufendorf establishes the paradigm with the establishment of *entia moralia*. Muñoz de Baena, cit. op. 65. p.
[17] Corral, op. cit. 203. p.

by revolutionary Jacobinism[18]; and which can still be detected today in systems of political correctness. A kind of secularized puritanism that acts as a moralizing mechanism in the face of social anathema, the banner of today's *culture of cancellation*.

In short, returning to the above, the true moral significance of law in its traditional sense directs the law – as a formal expression of justice – towards the good of correcting the bad. First, it deals with the good, which can be common or particular[19]. Second, it deals with that which violates that good, again either particular or common. If it is common, it is the good of the political community, which at the same time can be a material good or a spiritual good; that is, natural or supernatural[20]. For the common good is not relative only to the goods of individuals, but to the ultimate and transcendent good that gives eschatological meaning to the political community[21], the place where our otherness and the special communion we have with others are rooted. From this otherness, we can deduce the natural coexistence of individuals in a situation of peace. A situation of conformity to a transcendent order linked to moral unity, which St. Augustine wisely defined as "tranquility in order"[22]. Therefore, law also moves toward the sense of public order, which is a manifestation of a cosmic order expressed in nature. At the same time, law also tends toward the negation of that which abrogates this order, hence it requires violence to preserve it and, if necessary, restore it[23].

Thus, law is rooted in three fundamental pillars: righteousness, as a criterion for what is appropriate to order; justice, as the realization of justice; and goodness, as the goal towards which it should be directed. According to this, morality is transcendent and extra-legal, since morality should in any case be situated as an expression of good, or a foothold for goodness. Similarly, the immoral must be understood as that which causes injustice by generating disorder, either because it transgresses the social order and destroys otherness or relationships with third parties, making coexistence impossible; or because it violates the primacy of the natural order, which is nothing other than the structure of reality, linked to the universal order of things. The transgression of the natural order constitutes an intrinsically unjust act, derogating from the legitimacy of the law as a formal expression of right. The natural order contains natural law, which responds to the structure of the order of creation under the mode of *potentia ordinata*. The objectivity of natural law therefore responds to a *connaturality* about order and justice, which operate as the primordial unity of legal[24].

Conversely, in subjective law arising from voluntarism, individuals will have sufficient capacity to penetrate the natural order through the incessant action of desire, whose movement is driven by the very impulse of private will. Legalistic law, which has become a pure imputed and imputing formality, acts by way of exception to penetrate the structure of reality according to its designs, creditors of the divine, subjecting the order of creation to the creative will of the individual. In this way, the order of

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[18] On this issue, it is always interesting to read Walzer, Michael, *The Revolution of the Saints: A Study of the Origins of Radical Politics*, Buenos Aires, Katz, 2008.

[19] "A particular good is good because it participates in infinite divine goodness. This means that a particular good has attractive force, because it participates in something of the attractive force of the first good. And if this is so, then every time something is chosen, God will be desired first." Widow, José Luis, *Orden político cristiano y Modernidad: una cuestión de principios*, Madrid, Marcial Pons, 2017, 66. p.

[20] Widow, op. cit. 83. p.

[21] "Man is connected to God publicly and privately, individually and socially." Ayuso, Miguel, Koinós, *El pensamiento político de Rafael Gambra*, Madrid, Speiro, 1998, 126. p.

[22] "In effect, the idea of transcendent justice consists in the preservation of order, of the harmony that arises from just and due balance; for only under that natural order can there be authentic peace, the peace of order, the Augustinian *tranquillitas ordinis*." Negro, Dalmacio, *Lo que Europa debe al cristianismo*, Madrid, Unión Editorial, 2007, p.256.

[23] D'ors, Álvaro, *La violenca y el orden*, Madrid, Ediciones Dyrsa, 1987, 73-75. pp.

[24] "With Christianity, insofar as order is created by God, it is a matter of transcendent justice, which governs directly as a virtue the inner man, guiding his preferences and decisions, and indirectly the outer man, ordering and directing his actions. It is the idea of justice of ordinalism, which had its maximum expression in the Middle Ages. If that period is not considered, it is unintelligible. It is a vision of order whose rules or laws, as far as man is concerned, are those of Natural Law; universal rules in time and space relating to the rectitude of human behavior; with the substantial difference that the Christian, in contrast to the Greek and the Roman, understands natural law as a participation in eternal law explained by St. Augustine as *ratio vel voluntas Dei*. It is not, therefore, the pure and supposedly rational eternal law that governs natural cycles or the destiny of the ancients or the Kismet of Islam: it is intimately linked to the personal Christian God whose essence is love". Negro, op. cit. 255. p.

nature is broken in favor of the capricious oscillations of subjectivism, which transmutes the legal into a kind of desiderative act of the will, manifested in the evanescence of the subject's volitional shifts.

Therefore, in statist legality, the subject enjoys a "*ratione temporis situationis*"[25] in which legislative discretion, both of the individual and of political power, exceptionally transcends the ordinary order of the legal through an act of personalist will, something that, as is well known, Carl Schmitt understood very well in his famous analogy with the miracle in theology[26]. Therefore, the idea that the power of the State is autonomous is, in essence, a myth[27], although it is self-referential. This brings us back to the dawn of philosophical modernity, in its endeavor to justify the will of the state by replicating the natural order as a reflection of political law, which concerns the individual and his condition as a subject, thus doing away with Aristotelian-Thomistic hylomorphism. For this reason, since the emergence of the state, natural law has been confused with positive law to the extent that legislation constitutes the sole source of legitimacy, dictating what is in nature in strictly rationalizing and positivist terms.

For classical legal tradition, natural law is fundamentally law, as it reflects natural reality, which is the objective and universal foundation of law, perceived through human experience itself. From this experience, we can deduce the concrete fact of what is just in action, whose analogical reference is justice in potential as a universal value. Therefore, the law requires adaptation or ordering in nature as created, which is neither gnosis nor hermeneutics, but an immutable guiding principle. This is unthinkable for the statist mentality, which settles the question of law under its relevance to the sovereign will, which is formally univocal in its construction, essentially ambiguous in its substance, and directed at subjects subsumed in the totality of political artifice. Certainly, modern law or legislation, in its practical sense, is not ordered toward the common good, but rather is arbitrarily imposed on accountable subjects, a new moral realm, because, as has already been said, the cause of morality lies not in the purpose of the command, but in the will of the one who commands. In this sense, Professor Muñoz de Baena points out:

"The specific content of the moral act is irrelevant; what is important is the norm that governs it (...) The reification of the latter (the subject), the abstract construction of his will (whether that of the subject or the sovereign), in terms of imputation, is responsible for the long history of subjective law as the ultimate reference point for the legal system and, at the same time, for its subsumption into the legal-political order represented by the law, the State, and, always, the system..."[28].

In effect, the subject appears as an essential spell for the efficiency-driven conspiracies of subjective law. The modern subject, whose qualification as a subject is given precisely by his irrevocable subjection to the system, is at the same time the repository of the law – and therefore the dwelling place of morality – and the absolute legislator, being empowered to impute the law at his discretion, in the same way that he is the object of discretionary imputation. The purpose of the law imposed and calculated by and for the subject operates exclusively in reference to a type of private good that is indeterminate in its teleological amorality, as it cannot be hierarchized, only politically organized.

For Modernity, every law is good, given its prescription, regardless of its ultimate purpose or its suitability for the good, since the good lies exclusively in the power to command and in the capacity to accept command. Hence, deep down, all subjects are virtually equal, except for the holder of the absolute will of the State, which is in eternal dispute with the absolute will of the subjects that compose it. The legitimacy of modern law responds solely, as we see and ultimately, to the imputability of the subject. A formal construction that will run transversally through Modernity to the present day, under the hypertrophied emergence of legal relativism. This embitterment of the subjective right of early Modernity will be taken to its ultimate consequences in postmodernity, close to nihilism, derogatory of nature. The subjectivist debacle of law suppresses good as the purpose of law and replaces it with will, which is both the driving force behind it and the source of all sovereign legitimacy. In contrast, the legitimacy of Thomistic law requires an ordering of the natural as created, as well as:

[25] Schmitt, Carl, *Legalidad y Legitimidad*, Granada, Comares, 2006, 68. p.
[26] On this issue, see Gallego, Francisco de Borja, "El Milagro politico de la juridicidad moderna en Carl Schmitt", in *El poder de la decisión. La insólita actualidad de Carl Schmitt*, Madrid, Sindéresis, 2022.
[27] Negro, op. cit. 42. p.
[28] Muñoz de Baena, op. cit. 81. p.

"A rational ordering towards the common good, its teleology, its final cause. This prevails over its formal cause (promulgation) and its efficient cause (the will of the one who issues it); all of these are necessary for a law to exist, but the essential one is the reference to the common good, in principal analogy. In the Thomist conception, there is no tension in the law between the universal and the, as it refers continuously to the act: its meaning is the particularization of what is just in reference to each subject"[29].

II. The problem of legitimacy

As I have tried to explain, not without a certain degree of inevitable repetition, goodness is placed on the altar of law, constituting its ultimate purpose. The natural shift of law toward goodness and its adaptation to the natural order of creation confirms its legitimacy, which rises above the formalistic legalisms typically found in the state, limited to the contingencies of institutional politics. The legitimacy of the law therefore lies in the eternal and the universal, which is, after all, moral, having its origin in the divine. The source of the legitimacy of the law remains a controversial issue today. For a supposed morality of origin because of an extrinsic imputation by divine mandate can raise suspicions of voluntarism, even in Catholic political theology. A possible re-reading of Álvaro D'Ors, mentioned above, who was directly influenced by Donoso and Schmitt, brings renewed interest to the subject. It is therefore once again appropriate to differentiate between the moral substrate of legitimacy, from which its ontological dimension is deducted, which does not make law or legislation direct instruments of morality, but rather the necessary mediation for the achievement of the common good, whose ontic dimension is moral since it is located at the very end of civil society[30]. This is a theological issue inextricably linked to the otherworldly concept of Christianity, present in these authors with a Catholic background. The very idea of empire, strongly defended by Catholic political theology, requires a concept of universal law. I believe that this explains the universalist – rather than voluntarist – conception of law, at least according to Western legal tradition, which could also be described, in a somewhat heterodox way, as a kind of "legal realism."

In any case, the crux of the legalistic problem of the state, which cannot be separated from a theological meaning under the presumption of its theonomous legalism, is that it is sufficient unto itself to determine good and evil under social and conventional norms. Hence, we can speak of a double dimension of legitimacy. One to determine the purely social origin of law as public convention, that is, as the result of an institutional process, and another to determine its transcendent link with the universal and eternal, as I explained above. For state legalism, the artificial legitimacy of consensus and formal political channels is sufficient to establish the intrinsic good of the law, designed to satisfy the demands of the subject, the receptacle of sovereignty and, at the same time, the source of all possible legitimacy. This is a paradox, since the subject itself cannot suffice to formalize its own will without a jurisdictional apparatus that discretionally imputes this or that right that serves to satisfy its designs. This generates tension with the will of the state that brings us back to the great modern paradox, between the equivocality of the subject and the univocality of state power[31].

For St. Thomas, the law is only law insofar as it is legitimate, and it is only legitimate insofar as it is good. Therefore, the law can only be law if it is just, that is, if it approximates the good and is ordered to morality, without taking possession of morality for itself[32]. Similarly, law is not law when it

[29] Muñoz de Baena, op. cit. 88-89. pp.
[30] Widow, op. cit. 103-105. pp
[31] "Legitimacy based on the satisfaction of the subject's desires, which are unlimited in themselves, entails the necessary insufficiency of a subject of legality to the limits of what it can guarantee and provide at any given moment, resulting in a political legitimacy that is more or less incomplete, more or less satisfactory, but never complete." Utrera, Juan Carlos, <<La metamorfosis de la legitimidad moderna >> in *Legalidad y Legitimidad en el Estado moderno* (Dir. Juan Antonio Gómez García), Madrid, Dykinson, 40. p.
[32] "Justice will become the unity of law and good, since the two main modes of law are presented as just, in a common nature (justice) that they realize in different ways: law as quiddity, good as exercise (...) Justice, then, constitutes a unity by nature, transcendental (not a merely nominal unity), which is exercised in different ways in each of its own modes and in relation to the main modes: the law, according to the formal mode; the good, according to the final mode. (...) Thus, justice will be the transcendental relationship between the law (general or particular) and the good (general or particular), by virtue of the act of legislative or judicial prudence." Gómez, Juan Antonio, *Derecho y analogía. Estudios de hermenéutica jurídica*, Madrid, UNED, 2017, 75-76. pp.

transgresses or repeals order and strays from the good, thus making the law intrinsically unjust. But law cannot be law, and the law cannot be law, if it becomes intrinsically moral, which is the main legal flaw of Modernity when understood as an imputation, emphasizing the immanent and self-referential nature of law. This is precisely where the main problem of state legislation lies, encapsulated in legalistic legal systems that are supposedly neutral and subject to a purely formalistic concept of legitimacy.

Law in modernity is self-referential because it has become detached from any connection to the idea of fairness, the specific embodiment of justice. The universal concept of justice that underpins the objectivity of law[33] is diminished in its transmutation into the subjectivity of norms, imputable artifacts that operate as technical regulations subsumed in the totality of subjective law, inhabited by the will that precedes sanction. The norm then appears to regulate the order imposed by the State, deploying its factual capacity through the exercise of violence, honoring Max Weber's famous maxim on the legitimate – or rather, legal – monopoly of the same. The norm is, therefore, the instrumental provision that formal legalism uses to attribute and impose sanctions intended to regulate and modulate human behavior, thus preserving the structural order of the system, which is presumed to be self-sufficient. The legal system, a positivist legacy of Kelsenian stamp and indebted to Kantian morality and Ockham's voluntarism, is calculatedly designed to impose regulations that direct human existence under a feigned and fictitious neutrality.

Conclusions

Throughout this brief work, I have attempted to resolve the process of eviction or abrogation of law in favor of new artificial legal formulas that bring statist law, despite its legalistic, formal, and apparently unambiguous veneer, closer to an inescapable nihilism. Legislation unfolds as a mechanism of imputation, which I have attempted to define here as a formal attribution with a condition of possibility. First, it is a mechanism because it is part of a closed and immanent system. It is not definitively an order, since order tends to project itself into the universal, while the system, which is self-referential, tends to fold in on itself. Second, it is a formal attribution because the only way out of the system, is another configuration programmed by itself: law as a performative representation that discretionally adjudicates imposed realities, which operate as false legal ontologies and are completely changeable. Third, and as a logical extension of the above, it has a condition of possibility that must necessarily be rooted in the evanescence of the will, identified with freedom. The act is postponed, and in its place the potential triumphs. That said, and this is something that has already been emphasized, the will, like morality, plays a dual role: as the origin of all ordering or prescription, and as the final receptacle of the mandate.

In short, what can be inferred from this brief corollary is that legal modernity, even more so today than ever before in its most bitter update, known as postmodernity, has disoriented the compass of law. It is an urgent task to revitalize law from its ontological dimension, relocating it in its being and restoring its substance. If statist legality controls our existence, because it presumes itself to be moral by self-determining and self- legitimizing, the law must resist as the last bastion of freedom, with all its strength and dynamism, seeking its legitimacy beyond the ever-changing social and political transformations. Legitimacy limited to subjective will, will always be the enemy of Truth, always the defender of the narrative that mythologizes the political and sacralizes the world. The path to the restoration of authentic law is arduous but necessary, for it is urgent to reclaim a substantive political theology that restores the sense of order to the individual in his or her relationship with the common good, which is proper to the natural world, the prolegomenon of the divine.

[33] "For the classical legal tradition, objectivity does not lie primarily in the norm but in social reality itself, that is, in things. It is the objectivity of finding what corresponds or is appropriate in justice to a specific case in life." Gallego, op. cit. 57. p.

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