ABSTRACT

Philosophy of Law in Times of Crisis

Philosophy of Law and Crisis: sovereignty, emergency and exception
Anyone who comes across Philosophy of Law is in a situation that existentially involves his personality to a more or less significant. Wondering what Philosophy of Law is means becoming aware of a personal situation: a moment of our destiny that is not entirely indifferent. If existence has made us encounter an activity of reflection, our being human forces us to face it in order to become aware of what it means. Asking the question of the Philosophy of Law means opening up to the problems that culture poses with regard to both philosophy and law, comparing them with human experience. We live in an era in which looking at the global experience from a legal perspective has its own profound historical justification and existential relevance, perhaps decisive. The problem is the human being in his integral humanity. Therefore, it is first necessary to think about the crisis lived by humanity as a concept and then to identify a specific crisis around which the Philosophy of Law is called upon to investigate and try to provide solutions. To enter into the physiognomy of the crisis and outline its themes, is considered useful to ask for help from the thought of the classics, such as Kelsen and Schmitt, whose teaching goes beyond the twentieth century. The relationship between emergency and exception and the downsizing of popular sovereignty in the face of the powers of the European Union and transnational lobbies are fundamental cross-cutting themes of research from which to move to identify the crisis factors of a State. Furthermore, the issues of emergency and exception have strongly returned to the center of the legal-political debate, also in reference to the management of the coronavirus pandemy and the consequent crises caused by individual States. In this regard, a comparison is useful between Walter Benjamin (the state of emergency in which we live is the rule), Carl Schmitt (the rule lives only in the exception; the sovereign is who decides on the state of exception) and Giorgio Agamben (the exception is the original form of law), to be analyzed before studying the paths used and the landing places to which they arrive, to lay the theoretical foundations from which to start to analyze this crisis at the political-constitutional level in the legal political European context.

Stefano Guerra
Lawyer
Ph.D. in Legal Sciences
Honorary Fellow in Philosophy of Law
Department of Law - University of Macerata