En Sánchez, Álvaro y Cervi, Jacson, *Reflexões contemporâneas sobre direitos humanos*. Santo Angelo (Brasil): FuRi.

The law in the philosophy of Jean-Paul Sartre.

Arrieta, Enán.

Arrieta, E. (2016). The law in the philosophy of Jean-Paul Sartre (pp.79-114).
In: A. Sánchez & J. Cervi., Reflexões contemporâneas sobre direitos humanos. Santo Ângelo: Furi.

Reflexões contemporâneas sobre Direitos Humanos – ISBN 978-85-7223-423-8 - 2016

THE LAW IN THE PHILOSOPHY OF JEAN-PAUL SARTRE
EL DERECHO EN LA FILOSOFÍA DE JEAN-PAUL SARTRE
LE DROIT DANS LA PHILOSOPHIE DE JEAN-PAUL SARTRE

Enán Arrieta Burgos

> *'I HAVE RIGHTS!' Rights: Something like triangles and circles: it was so perfect that it didn't exist. You could trace thousands of circles with a compass in vain, you could never make a single circle. Generations of workers could as well scrupulously obey the commands of Lucien; they would never exhaust his right to command; rights were beyond existence, like mathematical objects and religious dogma. And now Lucien was just that: an enormous bouquet of responsibilities and rights. He had believed that he existed by chance for a long time, but it was due to a lack of sufficient thought. His place in the sun was marked in Férolles long before his birth. They were waiting for him long before his father's marriage: if he had come into the world it was to occupy that place: 'I exist," he thought, "because I have the right to exist'.*
> (Jean-Paul Sartre, The Childhood of a Leader)

Introduction

There are many ways to approach the relationship between Jean-Paul Sartre's (1905-1980) thought and the law. Recently, one of Sartre's most interesting studies on the subject was published: *Sartre et le question du Droit* (Kail, 2013). In it, Sartre's conception of law is presented in general terms according to the author paradoxical and incoherent, and its richness sometimes demands to think *against* Sartre himself (p. 30) [1]. Today, Michel Kail's text is an indispensable guide to anyone wishing to approach the subject although we must also take it with a grain of salt. Similarly, the doctoral thesis of Silvio Luiz Almeida, *Sartre: Direito e Política* (Almeida, 2011), and the doctoral dissertation of Thomas Burton Spademan, *Sartre, Marx and legal theory* (Spademan, 1996), are systematic and recent works about the relationship between law and the philosophy of Jean-Paul Sartre.

A specific form of this relationship belongs to the field of the "philosophy" of law. Some legal scholars have concerned themselves primarily with the implications of existentialism in the philosophy of law whether or not they agree with Sartre's

[1] According to Simone de Beauvoir: "throughout his existence, Sartre never stopped questioning time after time. Without denying what he called his «ideological interests», he didn't want to be affected by the, which is why he often chose to «think against himself», making a difficult effort to «break the bones in his head» (De Beauvoir, 1981, p. 13) and (De Beauvoir, 1982, p. 11). Sartre said: "I've often written them against myself, which means against everybody, with an intentness of mind that has ended by becoming high blood pressure" (Sartre, 1964, p. 164) and (Sartre, 2005, p. 213).

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philosophy[2]. Dogmatic studies of the law have done the same[3]. Further, some theoretical constructions have founded their conception of the law on Sartrean ontology[4].

Above all, analyzes contained in philosophy and legal doctrine manuals have take it upon them to theorize about the consequences that the existentialist conception of human liberty entails for the law. In a reduced and cliché manner, the mistake has been made of understanding univocally and statically the concept of human freedom[5] developed by Sartre throughout his work. As Juliette Simont masterfully summarizes the different forms liberty takes in the itinerary of Sartrean philosophy:

> Sartre never wrote about the morale he projected and in his search, he radically demystified it. The fact is that his work is moral in a certain sense pierced through with moral preoccupation by the perpetuated affirmation of freedom. Freedom of lucidity, freedom of tabula rasa and the corrosive freedom of Roquentin. Freedom that stems from their factuality and that makes sense in *Being and Nothingness*. Freedom of action constructive optimism in *Existentialism is a Humanism*. Generous and loving freedom, which delves into facticity and which incarnates in *Notebooks for an Ethics*. Revolutionary freedom from *The Legend of Truth* to *Critique of Dialectic Reason*. Paradoxically, that freedom is, at the same time, a moral gust that crosses all of his work and prevents it from being understood as a moral treaty: for it is precisely because freedom is free, that it is impervious to the prescriptive registration of morality (Simont, 2005, p. 23)[6].

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[2] *Cf.* On this matter: (Bobbio, 1949, p. 78); (Herrera, 2009, p. 131); (García, 1965, p. 543); (Brufau Prats, 1967).

[3] (*Cf.* Quintano Ripolles, 1952, p. 432; Blas Zuleta, 1960, p. 5; Sartre1968, p. 17), in Romano, 2010, p. 217).

[4] In this sense a very important text is *Nature des choses et droit* by Nicos Poulantzas (1965a). This text shows the conception of the law founded in the transit from phenomenological existentialism to Marxist existentialism (Poulantzas, 1965a, p. 74). However, Poulantzas abandoned Marxist existentialism to adhere himself initially to structuralist Marxism and later to Foucault (Tobón Sanín, 2011, p. 38).

[5] Partial readings of Sartre's work lead to two great clichés and errors. Mostly, these clichés and errors are unsystematic interpretations of Existentialism as a Humanism (2007) and Being and Nothingness (1992a). The first cliché, and which if an error of the lawyers with relation to sartrean philosophy: is a pessimist or decadent philosophy (*Cf.* Picado Sotela, 1965). The second cliché and mistake is a subjective philosophy (Gómez Duque, 1980, p. 21); (Kaufmann, 1999, p. 320); (Kaufmann & Hassemer, 1992a, p. 41); y (Pacheco, 1990, p. 35). It is not possible to accept, without nuance, any of these clichés, because the complexity of Sartrean thought requires a precision that must be traced throughout his works.

[6] Author**'**s free translation: "Sartre, finalement, n'a jamais écrit la morale qu'il projetait, et, en la recherchant, en est venu à démystifier de plus en plus radicalement la morale. Il n'en reste pas moins que toute l'oeuvre, en un sens, est morale, traversée du souci moral. Et ce à travers la perpétuelle affirmation de la liberté. Liberté de la lucidité, de la tabula rasa, liberté corrosive de Roquentin. Liberté s'arrachant de sa facticité et lui donnant sens dans L'Être et le Néant. Liberté de l'acte, optimisme constructeur de L'existentialisme est un humanisme. Liberté généreuse et amoureuse, s'enfonçant dans la facticité et consentant à l'incarnation dans les Cahiers pour une morale. Liberté révolutionnaire, de la Légende de la vérité à la Critique de la raison dialectique. Cette liberté, paradoxalement, est en même temps le souffle moral qui traverse toute l'oeuvre et ce qui fait obstacle à ce que cette oeuvre comprenne en elle un traité de morale: car c'est précisément parce que la liberté est libre qu'elle est réfractaire au registre prescriptif qui est celui de la morale" (Simont 2005 23).

From a partial reading of Sartre's work, studies based on the philosophy of the law have unfoundedly accused Sartre and existentialist philosophy in two key issues. (i) It has been said that it is a pessimist or decadent philosophy (Picado Sotela) and (ii.) that it is profoundly subjectivist (Gómez Duque 21), (Kaufmann 320), (Kaufmann and Hassemer 41) (Pacheco 35). Perhaps these accusations would have been right if it wasn't for the fact that they ignore the changes occurred after the Second World War. They would certainly benefit from re-reading Sartre's own defense (2007) regarding similar critiques in his famous conference: *Existentialism is a Humanism*.

To cite a recent example, Bruno Romano (2010) considers, wrongly in my opinion, that from *The Transcendence of the Ego* (1991) on it is possible to say that the existence of a subject without a self, abstract and impersonal center of imputation of fundamental rights. According to Romano, the conception of positivized fundamental rights is in opposition with the notion of the rights of man, which, Romano argues, conceptually demands a subject and his self. The Italian author argues that the subject of fundamental rights, that is, the subject without a self, is the legacy of authors such as Nietzsche, Husserl, Sartre, Kelsen y Luhmann (Romano, 2010, p. 278). I believe that lumping together such different ideas, and thinking that phenomenology, existentialism, legal positivism, and systems theory (functionalism) account for the same reality is, at best, an excessive oversimplification. It is true that Sartre would not affirm the existence of a self outside of every contingency, which according to Romano is the basis of the rights of man. But in *The Transcendence of the Ego* (1991) Sartre did not intend to banish the pure self of consciousness in order to affirm in its place the existence of a selfless subject, impersonal, irresponsible, fatally determined, which is Romano´s evidence for what he calls fundamentalism and legal nihilism (p. 209). On the contrary, Romano forgets that to Sartre the self does exist and it transcends into consciousness, but not as a pure self, rather as a phenomenological self, outside, in the world, that is, as self-responsible for itself, of the world and of others.

With this panorama filled with misunderstandings, I would like to contribute from another perspective to the critical discussion[7] about the notion of the law by starting *with* Sartre from the meaning and scope of the law as expressed by the French philosopher's own words. With the intention of marking the transit between visions,

[7] Here, critique is undertood as "the general investigation into its possibility and bounds" (Kant, 2008, p. 4) and (Kant, 2007, p. 87), in this case, the concept of the law. In similar terms, Sartre defines critique as the study of validity and limits (Sartre, 2004, p.21) and (Sartre, 1963a, p. 12).

which in my opinion are complementary to the law, I believe that the Sartrean conception of the law as an instrument of control of political power, and in that sense with a clear emancipatory potential expressed in popular justice has its base in the crisis of the law understood as the negation of the self, the detotalization of man and the oppressive institution of the dominant classes.

1 Preliminary notes about the main sources

In general terms, Sartre's thought did not always remain under the same cardinal point[8]. The French existentialist did not concern himself with clarifying the thematic unit of his philosophy despite the fact that he presupposed it (Sartre, Astruc & Contat, 1979, p. 80). As a consequence, the concept of the law in Sartre is not immune to these paradigm shifts. However, this does not imply an epistemological barrier but a well-defined way that allows for the identification of intersections in which the different paths of his thought are interwoven.

It must be said that unlike Hegel, author of the *Elements of the Philosophy of Right* (1991) – an inescapable citation of our author in some of his reflection on the law –, Sartre did not ever write a treaty of the philosophy of the law (Almeida, 2011, p. 60). His reflections about the law are found scattered in some of his writings. Furthermore, they did not occupy a central role in his philosophy. Nonetheless, one of Sartre's first works, dated in 1927, while he was but twenty-one years old, is curiously about the law: *La théorie de l'État dans la pensée Française d'aujourd'hui*[9]. With the distance acquired

[8] It must be noted that philosophical literature differentiates at least two stages in Sartre's work. He was marked by the Second World War (Sartre, 1977, p. 88). Others identify another moment in sartrean thought to his illness and the influence of his secretary Benny-Levy. Until the fifties Sartre was associated with the phenomenological tradition as a kind of romantic idealism (Murdoch, 2007). From then on he is seen as attached to Marxist dialectic materialism. Foucault considered Sartre as a man of the XIX century who dared to think about the XX century (Foucault, 1994a, p. 662) and (Foucault, 1989, p. 40). Although Sartre does from then on adhere to Marxism, he doesn't deny his phenomenological background (Theunissen, 2013, p. 261). As a matter of fact, following Hartmann and Seel, María del Rosario Zurro (2003) suggests that it is necessary to problematize the distinction between a phenomenological Sartre and a dialectic materialist Sartre given that from Being and Nothingness it was possible to advert the use of dialectics by the so called phenomenologist Sartre.

[9] To this text we will use the original French version. There are two versions of this text in French. The original version recently rescued in 1997 by Jennifer Mergy and co-published in *Quand le jeune Sartre réfléchissait à la théorie de l'État dans la pensée française: Présentation du texte de Sartre: «La théorie de l'État dans la pensée française d'aujourd'hui»*, and a re-translated version from English into French found in J.-P. Sartre, *Écrits de jeunesse. Chronologie. Bibliographie commentée. Textes rassemblés et présentés par Michel Contât et Michel Rybalka avec la collaboration de M. Sicard pour l'Appendice II* (Paris, Gallimard, 1990, p. 517). In fact, the original had been lost (Contat, Rybalka, & Sartre, 1970, p. 29), which is why Jennifer Mergy's discovery is so valuable.

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with the passing of the years, Sartre discussed the discomfort that that work produced in him:

> I remember that one of my first printed texts was a text about the law. It was printed in a journal in which a comrade had asked me to write an article regarding the authors of books about contemporary law. I wrote the article and it was printed. I remember the slight disgust I felt after reading it in print, because I did not think that that should not have been one of my first publications: it should have been much more of a finished work more like a novel (Sartre: en Sicard, 1989, p. 348)[10].

Some of the ideas contained in that article would be resumed in *Cahiers pour une morale*[11] (1983) and, in one form or another, they would be present in all of his subsequent reflections about the law. The *Cahiers* are composed of unfinished notes written between 1947 and 1948, and which would be added to his posthumous works published by Arlette Elkaïm-Sartre. The notes are unfinished, obscure, not well developed, and, in some cases, without revision. Sartre rejected their publication while he was still alive (Sartre, 1977, p. 112-113). The text even contains errors of drafting and editing, which allows for broad interpretative licenses in the absence of a critical apparatus to go with them (Tursini, 2004).

In 1960, Sartre published *Critique of Dialectic Reason*[12]. I believe that in Tome I, Book II, specifically, the most elaborate Sartrean considerations about the law from the dialectic materialism kind would appear. It is important to acknowledge the value of this source, as the references of Michel Kail's text of this work are only tangential. However, as it is known, Sartre could not conclude his *Critique of Dialectic Reason*, as Book III of Tome II *L' intelligibilité de l' histoire* (1985) is a posthumous work.

In that same line of thought, the French eighth volume of *Situations. Autour de 68* (1973)[13] was published in 1972. From that point on, Sartre started to develop his own notion of popular justice, exemplarily demonstrated by the Russell Tribunal[14], of which

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[10] Author's free translation: « Je me souviens qu'un de mes premiers textes imprimés a été un texte sur le droit, dans une revue de droit où un camarade m'avait demandé de faire un article, sur des auteurs de livres de droit contemporain. J'ai fait cet article et j'ai été imprimé. Je me souviens du mécontentement léger que j'ai eu à me lire imprimé, parce que je ne pensais pas que c'était ainsi que devaient être mes premières publications: ça devait être beaucoup plus une œuvre romanesque et achevée ».

[11] To this text we will use the original French version (1983).

[12] For this work we will use the versions in English (2004) and Spanish (1963a and 1963b).

[13] There is no English translation of this work. For this reason, we use the Spanish version: *Alrededor del 68. Situación ocho (1973).*

[14] The memories of the Russell Tribunal, as a collected work, can be consulted in two edited tomes under the direction of Vladimir Dedijer and Jean-Paul Sartre, written by Arlette el Kaïm Sartre: (*Tome I: le jugement de Stockholm*, 1967) and (*Tome II: le jugement final*, 1968).

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Sartre was Executive President in its first version (1966-1967). However, most of Sartre's defense of popular justice was recorded in interviews, letters, and inaugural speeches, and not in a treaty elaborated exclusively for that purpose. Some years later, Sartre would speak at the Justice and State conference in Brussels (1972), which appears in the tenth volume of *Situations: Life/Situations: Essays Written and Spoken*[15].

Six main sources constitute this framework of reflection. However, these writings caused Sartre some discomfort, they also contain errors in drafting and editing, they are unfinished, or by their own composition are not able to elaborate a systematic idea of the Sartrean vision of the law. With these limitations, I aim at identifying the movement of the concept of the law in Sartre.

In any way, I must say that even when an intellectual exercise could be perfectly made while deeply committed with just one of those sources, the present work only consists of a general introduction to the Sartrean critique of the law. For this reason, I trust that the reader will share such modest pretentions and will be able to excuse me if some depth is lost in my attempt to study a broader extension of Sartre's work. In the future it will be necessary to engage in a detailed way each of these works and their relation to the concept of the law.

2 First intuitions

In *La théorie de l'État dans la pensée Française d'aujourd'hui* (1997), Sartre coincides with Georges Davy in that the First World War (1914-1918) changed the question about the conception of the law: is the law a force or an idea? in other words, is it a fact or an idea? (Sartre & Margy, 1997, p. 26).

New dangers appeared with the war for the sovereignty of the states (ideal conception) and for the natural rights of individuals (affirmed as facts). The League of Nations, principal antecedent to what is known today as the United Nations (UN), was created in 1919 to face these threats and originated in the Warsaw Treaty. To Sartre, the League of Nations was an association in which the parties renounced their rights permanently (*Cf.* Sartre & Mergy, 1997, p. 27). Paradoxically, as Sartre noted, the principle of state sovereignty, which had led to the Warsaw Treaty meant a risk to its fulfillment. In Sartre's opinion, the Great War as a historical fact meant that it was

[15] For this work we will use the versions in English (1977a) and Spanish (1977b).

necessary to redefine the concept of state sovereignty and of natural law (p. 28). Nevertheless, a new paradox arose: while the First World War demanded a theoretical reflection about the law starting from what had *happened*, the longing of states to find an *ideal* notion of "the good law" (p. 28), superior and transcendent to what had *occurred*.

With these premises, Sartre explored on the one had the theses that aimed at providing an answer to the challenges set forth by the First World War about the problem of state sovereignty between realism and idealism. For that purpose, he studied the main works of Hauriou and Davy. On the other hand, Sartre took it upon himself to examine the realist thought of Duguit, who also referred to the topic at hand. Thus, according to Sartre, the theoretical dilemma about the First World War raised by French legal thought is circumscribed to the opposition between idealism and realism: to consider what happened (realism), but at the same time to think about the good law (ideality). In the young thinker's own words "the idealism of the law will be an attitude of the spirit, which discovers fact and idea together, and the idea as the support of the fact. The realism of the Law would stick to the fact: hence the German notion of Force, because Force is a fact"[16] (Sartre & Mergy, 1997, p. 28).

In Sartre's opinion, Maurice Hauriou's thought (1856-1929)[17] about the law can be categorized as a kind of "experimental idealism" (Sartre & Mergy, 1997, p. 29). According to Hauriou, the State was "an institution born out of necessity: it is a government. Men are called to this government and others are represented by it: thus, the State becomes a common idea. As such, it is sovereign"[18] (p. 30). But as Sartre points out, to think about a fact does not transform it into law[19], which is why he argues that Huriou should modify his premises completely and make the State a moral subject, that is, a social idea, which thinks about itself as a common will. In attempting to construct the ideal starting by the fact Hauriou is denounced by Sartre as conferring the ideal an autonomous entity, which only shows that his theory is unorganized: "fact and

[16] Author's free translation: «L'idéalisme du droit serait l'attitude de l'esprit qui découvre ensemble le fait et l'idée, et l'idée comme soutenant le fait. Le réalisme du Droit s'en tiendrait au fait: de là la notion allemande de la Force, parce que la Force est un fait».
[17] Hauriou's work, used by Sartre, is *Principes de Droit Public*. It can be consulted in the digital archive of the French National Library (Hauriou, 1916).
[18] Author's free translation: Une institution naît d'un besoin: c'est un gouvernement. Des hommes sont appelés à ce gouvernement et d'autres se le représentent: l'Etat devient alors l'idée commune. En tant que tel, il est souverain».
[19] This idea is a constant in Sartrean thought (Sartre, 1963, pág. 132) and (Sartre, 1963a, pág. 165).

law coexist without intelligible relations"[20] (p. 30). For this reason, Hauriou is obliged to return to his initial posing and should "prioritize a free will to the service of a pure idea above the objective institution"[21] (p. 31). Thus the "Idea" and freedom constitute the ultimate foundation of state sovereignty. Actually, Sartre argues that beyond an experimental idealism, we are in the presence of an absolute idealism, which completely discards the self. Furthermore, Sartre argues that with this confusion Hauriou's theory does not infer a practical response to the challenges demanded by the First World War.

In another attempt to reconcile realism and idealism, Georges Davy (1883-1976)[22], a French sociologist and Durkheim's student, recognized values as collective representations and social facts, which retained that axiological character, thus making them susceptible to scientific study (Sartre & Mergy, 1997, p. 32)[23]. As a consequence, the law "is a value that the community gives to certain facts, to certain personalities, and the sovereignty of the State is but an assigned value to this institution"[24] (p. 32). Natural rights and sovereignty are not justified *per se*. However, as collective values, as expressions of collective power they impose themselves upon the individual. This is how Davy is able to reconcile idealism and realism (p. 33). Sartre argues that Davy can at least provide an answer, although to his view unsatisfactory to the problems stemming from the First World War: even though the League of Nations cannot necessarily limit the will of the states, the collective consciousness of a people transforms its values in such a way making the State's accession to the League of Nations possible (p. 33).

Even when Davy's theory implies some progress in comparison with other arguments by Hauriou, for Sartre it is flawed for two main reasons. Firstly, the sociological method applied by Davy and derived from Durkheim, although presented as a kind of neorealism (the value of a social fact, but at the same time an idea), implies a metaphysical postulate. By affirming the existence of collective representations, sociologists are forced to accept the notion of the "creative synthesis" (Sartre & Mergy,

[20] Author's free translation: «(…) fait et droit coexistent sans rapports intelligibles».
[21] Author's free translation: «(…) il revient en arrière et donne la priorité sur l'institution objective à une volonté libre au service d'une idée pure».
[22] Sartre uses Davy's *L'idéalisme et les conceptions réalistes du Droit*, which was published in 1920 in the *Revue philosophique de la France et de l'étranger* (Davy, 1920). It can be consulted in the digital archive of the French National Library.
[23] For Durkheim, the rules of the sociological method required the understanding of facts as things (Durkheim, 1982, p. 50) and (Durkheim, 1986, p. 51).
[24] Author's free translation: «Il est une valeur que la collectivité attache à de certains faits, à de certaines personnalités, et la souveraineté de l'Etat n'est pas autre chose qu'une valeur attachée à cette institution».

1997, p. 33) given that they understand society as apart from, and superior to, the sum of its individuals. The sociological explanation would be based on the principle that "everything is superior to the sum of its parts", which implies that it is possible to have such a sum and compare its result to its totality. This is clearly not achievable: "French sociology is idealistic"[25] (p. 33). Secondly, despite this metaphysical postulate, Davy fails in his attempt to reconcile realism with idealism given that his sociological explanation of contract law is supported by the concept of "sworn faith" [26], which is an innate, evident, given, and factual manifestation of a "normal" morale. This is how Davy's explanation lacks normative values, although it can be admitted as descriptive theory: "despite his efforts to keep idealism, Davy banishes the notion of "value" of the facts he studied. There are no facts left: this means that he could not –despite the metaphysical postulate that distorts his idealism – give the smallest space in his thesis to idealism"[27] (p. 34).

In this argumentative order, if the theses which try to reconcile realism and idealism are not capable of offering an adequate answer to the posed theoretical problems arising from the First World War and dealing with the notion of the law and the concept of state sovereignty, Sartre will demonstrate that the realist theory of the law defended by Léon Duguir does not achieve this either. Duguit opposes Adhémar Esmein's idealism (1848-1913) and is against any type of supernatural explanation of the law. Duguit argued in the preface of the tenth edition of *Traité de droit constitutionnel* (1921) that "the State is simply the product of a natural differentiation" (VII)[28]. In this vein, it is a social function that pursues a common interest (*Cf.* Sartre & Mergy, 1997, p. 35).

For Duguit state sovereignty, understood as the power to create laws, responds to a social need that finds solidarity in the founding fact (*Cf.* Sartre & Mergy, 1997, p. 35). This solidarity conditions the individual and group functions, which are preceded by that need. For this reason, and exaggerating a bit, human beings serve functions and

[25] Author's free translation: «(…) la sociologie française est idéaliste».
[26] It can be consulted in the digital archive of the French National Library: *La foi jurée: Étude sociologique du problème du contrat: la formation du lien contractuel* (Davy, 1922).
[27] Author's free translation: «Quels qu'aient été ses efforts pour conserver l'idéalisme, Davy fait disparaître la notion «valeur» des faits qu'il étudiait. Il ne reste plus que des faits; c'est-à-dire qu'il n'a pu — malgré ce postulat métaphysique qui vicie son idéalisme — faire la moindre place dans sa thèse à l'idéalisme».
[28] Author's free translation: «L'Etat est simplement le produit d'une différenciation naturelle». The text by Duguit read by Sartre (1921), *Traité de droit constitutionnel* can be consulted in the digital archive of the French National Library.

roles more than rights in such a way that the violations of "rights" has nothing to do with the notion of dignity but dignity is assumed as an affectation against the social organism: "my freedom is not a right but a duty"[29] (p. 35). Duguit's proposal renounces de ideal or noumenal self to affirm an organic self, characterized by the state, or even better by the function of the state, and in the recognition of the human being as a numerically differentiated organism, in other words as a gear (p. 36). Hence, relationships between states are built solely from natural differences between states (soil, race, language) since something like a noumenal or spiritual personality inherent to states does not exist it makes no sense to talk about state sovereignty. According to Sartre, Duguit responds the questions set forth by the First World War to legal theory by stating that it was only a matter of time before the political evolution of Europe integrated all the natural differences between states in an organism created according to the "new formula of international agreement" (p. 37).

Sartre concludes his article by pointing out that although the problem of state sovereignty is commonly analyzed by applying to it the realist method, it also obliges those who think in this direction to search for idealist conclusions to safeguard the idea or the longing for the "good law" that surged after the First World War (*Cf.* Sartre & Mergy, 1997, p. 37). Nevertheless, Sartre argued that the complexity and fragility of the theoretical constructions analyzed (Hauriou, Davy and Duguit) lead to their rapid abandonment as an object of reflection. Finally, inclining himself in favor of realism, Sartre sentenced: "the future belongs to those who in these matters will resign themselves not to expect from realist methods more than realist outcomes and who will know that those who depart from the facts will never arrive at more than facts"[30] (p. 37).

In disagreement with Michel Kail (2013, p. 18), I believe that *La théorie de l'État dans la pensée Française d'aujourd'hui* is of vital importance in understanding Sartre's subsequent reflections about the law. That article allowed Sartre to identify the paradoxical duality in which the law moves itself, that is in the tension between idealism and realism. In other words, Sartre recognizes that the law is dialectically debated between the longing of the sentiment of the "good law", or for our purposes, of a "just law" –the object of study of the philosophy of the law– and the description of its

[29] Author's free translation: «Ma liberté n'est donc pas un droit mais un devoir».
[30] Author's free translation: «l'avenir est à ceux qui, en ces matières, se résigneront à n'attendre des méthodes réalistes que des résultats réalistes et qui sauront que celui qui part des faits n'aboutira jamais qu'à des faits».

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statute as a social fact determined as such by the circumstances that condition its formation process –the object of study of the sociology of the law–. This idea, which Sartre returns to in *Cahiers pour une morale,* is fundamental in understanding not just Sartre's critique against the bourgeois law, but also to understand the realist (dialectic materialism), and at the same time idealist (liberation) critique of the law.

3 Ontology and the law

Before we proceed I must make a clarification. The reader might wonder why this article is not about *Being and Nothingness: a phenomenological essay on ontology* (1992) if we are discussion ontology and the law. However, I believe that the reflections of *Being and Nothingness* allusive to the law are better developed in *Cahiers pour une morale* (1983), which makes its analysis very interesting. Nevertheless, some indications in *Being and Nothingness* can be noted as marginal notes on the approach developed in this text.

In *Cahiers pour une morale*[31], Sartre remembers two great theories that define the conceptual framework of the law: the spiritualist theory (idealism) and realist theory. According to Sartre (1983), the law has a double aspect: "that of *not being* (value, negation of what is real) and that of *being* (a real judicial system in a society)"[32] (p. 145). Precisely this characterization of the law allowed Sartre to elaborate his ontological critique of abstract, idealistic and bourgeois law. Referring to the law, Sartre stated:

> It is pure formal negativity. But the law appears, as any formation of the spirit, with a concrete content from which it originally distinguished itself. That content is precisely the present state of society considered, as it should be. Here, the law is the *statu quo* as a negation of temporality. In that case: 1) it is considered as it should be. 2. Time is denied (Sartre, 1983, p. 152)[33].

[31] Bruno Romano's (2001) text proposes a different argument than the one presented here, but with great value to understand the relationship between Sartrean though and the law in *Cahiers pour une morale*.
[32] Author**'**s free translation: «(…) parce que le droit a ce double aspect de *n'être pas* (valeur, négation du réel) et d'*être* (système juridique réel d'une société)».
[33] Author**'**s free translation: «C'est la pure négativité formelle. Mais le droit apparait –comme toute formation de l'esprit- avec un contenu concret donc il ne se distingue pas originellement. Ce contenu c'est précisément l'état présent de la société considéré comme devoir-être. Ici le droit est le statu quo comme négation de la temporalité. En ce cas : 1° l'être est considéré comme devoir-être ; 2° le temps est nié».

Lets analyze how Sartre reached that conclusion. The central hypothesis is that the law is a "generalized deconstruction of everything that is"[34], "the destruction of the self or my own destruction"[35]: "the law is originally the negation of all reality"[36] (Sartre, 1983, p. 145). Sartre's argument is simple and attractive[37]. To be a subject of rights is at the same time not to be a subject of fact: it is pure alienation as the requirement of another (Sartre, 1983, p. 497), the passage towards a human existence *of* law (p. 577), in another words, towards slavery[38]. When the law indicates man as a subject of rights it denies what is effectively fact: "I am my own death"[39] (p. 145). That is why Sartre's position is: "To live without a right. To lose all hope of justifying oneself. To live unjustifiably" [40] (Sartre, 1992b, p. 15). It is important to remember that man, in existentialist philosophy, is contingency and project (p. 22), facticity and freedom (p. 277). As contingencies, we live without a cause or reason: «*l'homme est une passion inutile*» (Sartre, 1943, p. 662). As project, human beings are thrown into a future that calls upon them "Man is the fundamentally unjustifiable basis of all justification" (Sartre, 1992b, p. 15).

In any case, the destruction of the self implies the emergence of the law as a requirement, that is, as a particular way to direct human freedom (Sartre, 1983, p. 146). So, the requirement as opposed to the proposition imposes on the human being an end, making it dependent and inessential with relation to it, as much as the fulfillment of the duty does not admit a circumstantial excuse of any kind. The requirement and the law

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[34] Author's free translation: «Destruction généralisée de tout ce qui est»
[35] Author's free translation: «(…) destruction de l'être ou ma propre destruction».
[36] Author's free translation: «Le droit est originellement la négation de toute réalité».
[37] So, for example in *Being and Nothingness* (1992a) Sartre writes referring to the café boy who recognizes himself as a subject of rights "He knows well what it "means" the obligation of getting up at five o'clock, of sweeping the floor of the shop before the restaurant opens, of starting the coffee pot going, etc. He knows the rights which it allows: the right to the tips, the right to belong to a union, etc. But all these concepts, all these judgments refer to the transcendent. It is a matter of abstract possibilities, of rights and duties conferred on a "person possessing rights". And it is precisely this person who I have to be (if I am the waiter in question) and who I am not". (Sartre, 1992a, p. 60) and (Sartre, 1993, p. 94).
[38] The relationship between slavery and right is broadened in Book II of *Critique of Dialectic Reason* (Sartre, 1963b, p. 441). In *Cahiers*, Sartre said that if we get rid of slaves and of subjects of rights there is nothing left but the men of fact (p. 589).
[39] Author's free translation: «Je suis ma morte».
[40] Author's free translation: «Les droits. Explication. Vivre sans droit. Perdre tout espoir de se justifier. Vivre injustifiable». The authentic existence must be well understood, as it supposes to Sartre that "so, I can also say that there will never be someone to testify against me and that I am my own testimony. I am who nothing justifies, I justify myself internally" (p. 498). Author's free translation: «Ainsi, je puis dire aussi bien que je n'aurai jamais personne qui témoigne pour moi et que je suis mon propre témoin. C'est moi, que rien ne justifie, qui me justifie dans l'intériorité». Nevertheless, to be precise, Sartre later rectifies himself and says that it is not about conceiving man as unjustifiable: "We are not unjustifiable, because that would require a system of justification wherein we would not have our place" (Sartre, 1992b, p. 15).

are presented as "the purely negative freedom that is affirmed against the concrete man that I am"[41] (Sartre, 1993, p. 132). Curiously, this freedom steadies itself in the name of another's freedom in such a way that by pursuing the goal imposed by the requirement, in other words by fulfilling the law, the human believes himself to be free (Sartre, 1983, p. 146).

In this manner through an open critique of the Kantian conception of the law, Sartre (1983) denounces how human existence is turned into the requirement of being recognized as a free subject created as such through the destruction of the real world by the freedom of another demanding human being (p. 146). Man disappears as he is transformed into a purely formal requirement, into a universal freedom[42] identical to all and for all. Thus, man is the result of a detotalized totality (p.147). The end pursued by the requirement of the law maintains and imposes itself through a freedom that is foreign to us[43]. Then, the negative freedom provided by the law is not true freedom because it leaves no occasion for other freedoms, but it is a *required* freedom by the freedom of another (p. 147). The formal and detotalizing freedom of the law (we are all free and equal before the law) forgets that true freedom is "an infinitely concrete and qualified enterprise which is necessary to recognize *in its own* enterprise"[44] (p. 147).

According to Sartre, this negative freedom[45] conceded by the law builds itself upon a Kantian basis: man must be treated as an end-in-itself and not just as a means[46]. For this reason, the law's freedom is a pure and abstract freedom abstracted by another. Sartre believe that this kind of freedom coincides with Hegel's definition of abstract

[41] Author**'**s free translation: «(…) à la liberté purement négative qui s´affirme contre l'homme concret que je suis». Sartre denounces in *Being and Nothingness* (1992aa), it should also be said that the law turns man into a simple possibility.

[42] In *Being and Nothingness* (1992a), Sartre argues that the universal makes sense only thanks to the individual. This is, of course, a conception of the law and of liberty very similar to Marx's critique. In On The Jewish Question (1844), Marx insists that the rights of man are, by definition, "the rights of egoistic man, of man separated from other men and from the community".

[43] In similar terms, Sartre will discuss in *Critique of Dialectic Reason* the way in which the group imposes itself above individual *praxis* (1963b, p. 108).

[44] Author**'**s free translation: «(…) une entreprise infiniment concrète et qualifiée qu'il faut reconnaître *dans son* entreprise».

[45] In *Being and Nothingness* Sartre had already outlined the negative freedom of the law, while he referred specifically to the freedom to own property as a negative freedom: "I see also that the right is purely negative and is limited to preventing another from destroying or using what belongs to me" (Sartre, 1992a, p. 586) and (Sartre, 1993, p. 360). In that same book Sartre also wrote: "Property right appears only when someone contests my property, when already in some respect it is no longer mine" (Sartre, 1992a, p. 99) and (Sartre, 1993, p. 132).

[46] The practical imperative: "so act as to treat humanity whether in thine own person or in that of any other, in every case as an end withal, never as means only" (Kant, 2005, p. 46) and (Kant, 1996, p. 189). With relation to the misunderstanding and cliché between lawyers, the thoughts of Sartre and Kant are usually mixed to argue for the wrong conception of human dignity (man understood *only* as the end itself). The right and necessary explanation can be consulted in Solano Vélez (2012, p. 132-138).

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law: "For the same reason [*Grund*] of its abstractness, the necessity of this right is limited to the negative -not to violate personality and what ensues from personality. Hence there are only prohibitions of right, and the positive form of commandments of right is, in its ultimate content, based on prohibition" (Hegel, 1991, p. 69 and 70) and (Hegel, 1968, p. 68). This is why negative freedom constitutes itself as a type of violence. To be-for-another is objectified when it is demanded that the subject is treated as an end (Sartre, 1983, p. 148).

We can see how the Kantian conception of dignity, which traverses completely the contemporary conception of the law, implies, according to Sartre, that the law oscillates between the destruction of the world and the destruction of man (p. 185). Protected by an abstract right (human dignity), man rejects to inhabit the world together with others (p. 185). For the man conceived by the law, others limit his freedom and are an instrument for his complacency. For that reason, Sartre argues: "the law as an absolute requirement is precisely the destruction of the world" (p. 185). This is why pure law and pure violence are nothing more than the same reality, in a way that, in a strict sense, violence is nothing more than the law, which affirms itself as such against the world and of man (p. 185). Sartre masterfully exemplifies it. If I strongly affirm my right, I reject discussion, deliberation or an attempt to settle, and I consequently turn to the force of the State to protect the ownership I have over that right. For that reason, just as a bank trying to collect money owed to it, the force of my right allows me to be violent and to not take into consideration any excuse or reason, in such a way that, in the name of what should be, I exercise my right destroying what is.

In sum, according to Sartre: "every violence presents itself as the recovery of the law and reciprocally every right inexorably suspended contains an embryo of violence" (Sartre, 1983, p. 185)[47]. Thus, we can understand why in every confrontation of war, in every revolution, in every violent action, the right to conquer the right to say that violence was used in the name of the law is always at stake. According to Sartre, in absolute terms, there is not, and has never been, a violence on earth that does not correspond with the affirmation of a right (p. 185). What matters is that there is a brotherly relationship between the law and violence. Because, to put it briefly, every violence is trapped in the end that it pursues (p. 187).

[47] Cf. La violence est une métamorphose de l'univers de telle sorte que la violence devient un droit (p. 209).

A man's right to be recognized and valued by his fellow man as a end-in-itself supposes, on the one hand, the possibility to violently demand that recognition, that is, the possibility to demand the right to exercise violence. The man end-in-itself as an absolute source of all rights can consider his fellow man as an inessential or relatively essential being only to the extent that he demands from the other the acknowledgement that said violent demand of his right is legitimate and justified (p. 185). So, violence is the result of freedom (p. 186) exercised by a man worthy of the human rights he ascribes to himself as must be. But violence can only be recognized as such by more and more violence (p. 185), which means, for our purposes, that violent freedom can only be recognized by another violent freedom. That, in essence, is the contract.

In other terms, the freedom of which the law talks about, that is, the power to make everything that is not limited by everyone else's freedom (my freedom stops when the freedom of the other begins), renders the concrete enterprise of freedom a formal, recognized and objectified abstraction as such by the others[48]. In the exercise of recognizing and being recognized as an end-in-itself, man turns into "anyone", in such a way that his concrete reality does not matter (Sartre, 1983, p. 148). This allows the law to legitimate the injustices perpetrated by the bourgeoisie: "if every man has the right to possess, it matters little what he possesses. The sphere of particular conducts, goods, and works is left in the jurisdiction of religion and morality" [49] (Sartre, 1983, p. 149). Thus, justice becomes a mere formal possibility, in such a way that the material injustices turn into an object of charity.

According to Sartre, this is the reason why the law justifies itself in the disagreement between what is and what should be. Concretely, it arises in the resistance of the law by the oppressed classes (the proletariat and the colonized peoples). This resistance arises from the consideration of the oppressed classes that the law is just an instrument of the dominant classes (Sartre, 1983, p. 145). Therefore, the legal system is constituted as a requirement of the oppressors (p. 152). The law responds to the oppressed classes that by facing injustices they clash against it not with a force, but with that which *a posteriori* justifies the use of force by the dominant class: "the law always

[48] In other words, the law boasts about its recognition of man as an abstract subject of rights and as a concrete object of exploitation (Sartre, 1963a, p. 74).

[49] Author's free translation: «Si tout homme a le droit de posséder, peu importe ce qu´il possède. La sphère des conduites particulières, des biens et des œuvres est laissée à la juridiction de la religion et de la morale». Sartre later analyzed the relationship between the law and religion in *Cahiers pour une morale* (p. 154 y 155). It can also be consulted in *Critique of Dialectic Reason* (Sartre, 2004, p. 313) and (Sartre, 1963a, p. 499).

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starts from a *status quo* that promises never to change"[50] (p. 50). In other words, the law emanates from the looser who recognizes the violence of the winner (p. 275). In words of Bruno Romano: it is an order given by the violence of the winner to the looser, it is the order imposed with a meaning produced by someone for another (Romano, 2001, p. 24).

The freedom required by the law is exercised inside that *status quo* in which the oppressed classes are exploited as a concrete object while they are treated as an abstract subject of rights (Sartre, 1983, p. 150). The law is used by the oppressor classes to pacify the oppressed classes so they can recognize in the *being* a promised form of how they *should be* (p. 152), that is, a non-being. The hope of what should be promised by the law silences the hunger of the material conditions of existence.

As a consequence of that, Sartre (1983) defended the use of violence as a form of resistance to the *status quo* of oppression, given that it is not possible for the law to face the same right (p. 150 - 155). In simpler terms, the law is only functional to the oppressor because he is preceded by the economic circumstances of inequality and violence, which give rise to it (p. 151). Sartre would say that violence is the negation of legality, the destruction of the world that gives rise to the end in one absolute, precisely because the means justify the ends and give violence its value (p. 181)[51].

That is the reason why the oppressed are permanently criminalized by the law. In any case, if the exercise of revolutionary violence of the oppressed class is victorious "it will establish another law or, more precisely, the situation will be automatically transformed into a situation of the law, *because man is legal in his essence*" [52] (Sartre, 1983, p. 151). This means that every situation, even those created by violence is human, is lived by men and it is why the rule of law gives rise to the creation of the rule of law (p. 275)[53]. The violence of the winners is recognizes by the losers as a right (p. 276).

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[50] Author's free translation: «(…) le droit est toujours à partir d'une statu quo qu'on s'engage à ne pas changer».

[51] This idea will be better developed later in *Critique of Dialectic Reason*. The analysis of violence as a form of resistance, goes beyond the scope of this paper. For a detailed view see *Cf.* Wormser, 2006.

[52] Author's free translation: «(…) elle établira un autre droit, ou, plus exactement, la situation se transformera automatiquement en situation de droit, parce que l'homme est par essence juridique». It is necessary to problematize the term *essence*. Let's remember that the *Cahiers* are, mostly, unfinished notes. So, it is not so much that the law previously defines the human being, but, in any case, it does condition him. However, that statement can't be read alone: What do we mean here by "existence precedes essence"? We mean that man firs exists: he materializes in the world, encounters himself, and only afterward defines himself. If man as existentialists conceive of him cannot be defined, it is because to begin with he is nothing" (Sartre, 2007, p. 22) and (Sartre, 2009, p. 30-31).

[53] Sartre argues: "Precisely because every situation, even the one created by violence, is human, and because it is lived by men, every state of fact creates the rule of law" (Sartre, 1983, p. 275).

For Sartre (1983), the fatality of the law, no matter where it comes from, consists in that in every case it is tainted by the existence of a slave (p. 153). In simpler terms, the existence/demand of the law implies the existence of a slave to whom the law will recognize abstractly a formal freedom, and the slave in an exercise of his concrete freedom will violently rise against the law (p. 276, 277, 579).

However, the success or failure of this new establishment of legal things depends upon the concept of freedom it assumes. The debate will be around a formal and abstract freedom and a freedom understood as a concrete and qualified enterprise. Only in a perfect, harmonious and egalitarian society, in which everything happens as it should, does the law disappear, making itself implicit as no reality exists that can be denied in the name of the being (Sartre, 1983, p. 145).

The detailed analysis of *Cahiers pour une morale* results at this point in two conclusions which help us delimit the Sartrean critique of the concept of the law and which will be fundamental to understand our thesis. Firstly, as Michel Kail (2013) suggests, in *Cahiers pour une morale* Sartre describes and ratifies –as he had already done in his 1927 article– the paradoxical structure of the law: "in a paradoxical structure opposing aspects coexist, and the tension of that coexistence produces in the principle of the structure"[54] (Kail, 2013, p. 20). This paradoxical structure is dialectic. Therefore, the dialectic structure of the concept of the law allows it to be defined in the movement between idealism (spiritualism) and realism.

Secondly, it is important to briefly address the emancipatory potential of the law. If in *Cahiers*, Sartre only legitimated violence as a form of resistance to the law, in his later works he included *popular justice* as a *legal* form of resistance to the law. In other words, Sartre changed his mind from the complete negation of the emancipatory potential of the law to find in popular justice a form of resistance and control of political power. Popular justice starts from the paradoxical structure of the law, which will be elaborated from a critique to the law on the basis of realism while he aspired to a notion of the law that contributed to the liberation of the oppressed classes, which is key to my thesis.

[54] Author's free translation: «Dans une structure paradoxale, les aspects opposés cohabitent, et la tension que cette cohabitation produit est le principe même de la structure concernée».

4 The law and dialectic materialism[55]

In Tome I, Book II of *Critique of Dialectic Reason* we can find the most elaborate Sartrean construction of the Law. The scope of this paper does not allow me to deal with a dialectic conception of the law with the necessary caution. This enterprise, as many others suggested here, must be postponed. In spite of that a few annotations are necessary as a general outline of the dialectic configuration of the law.

Dialectics, or better yet dialectic reason, is circular as Sartre himself argued: "It should be recalled that the crucial discovery of dialectical investigation is that man is 'mediated' by things to the same extent as things are 'mediated' by man" (Sartre, 2004, p. 69) and (Sartre, 1963a, p. 230, 1963b, p. 307). Dialectic reason is situated, discovered and founded in and by man's *praxis*, installed in a historically determined moment and place (Sartre, 2004, p. 32) and (Sartre, 1963a, p. 180). This *praxis* is correlatively fashioned between individual *praxis* and collective *praxis* (García 2005, p. 145).

In this way, collective *praxis* can assume the form of a serial unit or of a group. In Sartre's words (1963a): "distinguish serial praxis (as the praxis of the individual in so far as he is a member of the series and as the praxis of the whole series, or of the series totalized through individuals) both from common praxis (group action) and from individual, constituent praxis" (Sartre, 2004, p- 266) and (Sartre, 1963a, p. 446). So, the serial *praxis*, which Sartre masterfully exemplifies in the scene of those who wait in line for the bus, does not allow that individual constitutive *praxis* to integrate in a common project, but on the contrary it leads to the objectification of the individual in the practical-inert (Sartre, 2004, p. 333) and (Sartre, 1963a, p. 522). Unlike serial *praxis*, group *praxis* overcomes seriality in that it establishes a freedom project common to the individual constitutive *praxis*.

The survival of the group is guaranteed through the formalization of freedom as collective *praxis*, in such a way that individual *praxis* sees in it a reciprocity in its own inertia. This is where the concept of pledge appears (Sartre, 2004, p. 419) and (Sartre, 1963b, p. 92). The path should not be confused with the social contract, as it is born from the fear that emerges at the interior of the group (betrayal) and with relation to the external dangers it faces, it must be understood simply as a historical fact, as the

[55] An indispensable reference to understanding the law in *Critique of Dialectic Reason* and that unfortunately due to space constraints could not be explained, can be found in *La critique de la raison dialectique de J.-P. Sartre et le Droit* (Poulantzas, 1965b).

passage of an immediate group form –with the danger of dissolution– to another reflexive and permanent form (Sartre, 2004, p. 414, 417) (Sartre, 1963b, p. 81, 89). The pledge is enacted as a right to life and death with relation to the individuals, which are part of the group versus those who are not part of it[56]. The pledge forcefully imposes itself upon the individual praxis of the members of the group, in as much as they have provided their consent to it despite their own freedoms (Sartre, 2004, p. 432, 433) and (Sartre, 1963b, p. 107, 108, 109). In this way, on the basis of the oath there is a right/duty to the group (Sartre, 2004, p. 438, 439, 440) and (Sartre, 1963b, p. 114, 116).

At this level of abstraction (the group) and in the middle of that dialectic relation between constraint and freedom, a synthetic product is born out of the group: the right, or more precisely, the diffuse power of jurisdiction (Sartre, 2004, p. 441) and (Sartre, 1963b, p. 117). Although, as Sartre admits, it makes no sense to trace the historical genesis of the law, the law cannot be based on individual freedom, the social contract, and constraint of an organ foreign to the group or custom. The law is the expression of freedom (individual in the collective) freely limited as the consented mutilation of a survivor group that pretends to turn into a statutory group (Ibíd.).

In the face of the internal and external impossibility that the group will totalice itself as such, the law emerges as "it is therefore a new form of totalisation intended to compensate for the impossibility of completing the totalisation, that is to say, of its appearing as a form, a Gestalt, a collective consciousness above all the members, and, therefore a guarantee of their permanent integration" (Sartre, 2004, p. 441) and (Sartre, 1963b, p. 117). This form of totalization allows the law to be easily understood as a terror regime. Thus, for the group "in everyone, freedom as a common structure is the permanent violence of the individual freedom of alienation" (Sartre, 2004, p. 441) and (Sartre, 1963b, p. 118).

In its hurry to establish itself, the group defines concrete functions, which are translated into the right of each one to fulfill his particular duty, in such as way that according to Sartre right and duty are mixed up[57]. Expressed in different words, the group recognizes in its members the right to fulfill their obligation (Sartre, 2004, p. 606) and (Sartre, 1963b, p. 303). In this way, right and duty uphold the existence of the group through a kind of inertia (Sartre, 2004, p. 491) and (Sartre, 1963b, p. 173). The duo right/duty is a concrete dimension of alterity. In Sartre's words: "Right and duty, in

[56] A reflection about the rights to life and death can be found in: (Ruíz Gutiérrez, 2012, p. 57).
[57] This idea was already developed in *Cahiers pour une morale*.

their non-transparent certainty, appear to dialectical investigation, and to practical consciousness, as my free alienation from freedom" (Sartre, 2004, p. 540) and (Sartre, 1963b, p. 242). To sum up:

> Right and power grow from the pledge and from function, and consequently inside the group. But on the basis of free, pledged inertia and in the con- text of a common praxis, the group acquires the ability to give a power over itself to non-grouped individuals or to external groups, either in the form of contractual reciprocity (through inertia pledged in the Other from outside), or in any other form (Sartre, 2004, p. 567) and (Sartre, 1963b, p. 259).

The establishment of functions and of a structure is also characterized by the constitution of an authority, understood as a relation of one with everyone else. This authority is developed in institutions[58], which inertia in seriality is guaranteed by the law as constituted (Sartre, 2004, p. 607) and (Sartre, 1963b, p. 305) and institutionalized power. Force, as the expression of authority and concentration of terror, is both a right and a duty to authority (Sartre, 2004, p. 628) and (Sartre, 1963b, p. 327). This is followed by a particular conception of the State.

The State becomes a category of the institutionalized groups with a specific sovereignty (Sartre, 2004, p. 640) and (Sartre, 1963b, p. 341). As such, a determined seriality emerges called the dominant class which is deliberately maintained separate from the dominated class and which force originates in the appropriation of power and the impotence of the dominated class to free itself so that this relationship is internalized and transformed into right (Sartre, 2004, p. 641) and (Sartre, 1963b, p. 342). For example in colonization processes, the oppressed class, the super exploited, is annihilated "on the practical refusal to treat them as subjects with rights, whatever the right" (Sartre, 2004, p. 728) and (Sartre, 1963b, p. 441). In similar terms, in the oppression founded by industrial capitalism, that is in the oppressive exercise of life and

[58] In *Détermination et liberté* (1966), Sartre distinguishes between three types of social objects: institutions, customs and values. Therefore, we could say that according to that classification the law is an institution: "Social objects have in a common an ontological structure which we call the rule. These objects are diverse: institutions, particularly the laws, which prescribe conduct and define the sanction; customs, not codified but diffused which are maintained in an objective manner as imperatives without institutional sanction or with a diffuse sanction (scandal); lastly, normative values, which refer to human conduct or to its results and which are the object of axiological judgment" (Contat, Rybalka & Sartre, 1970, p. 537). Author's free translation : «Des objets sociaux qui ont en commun une structure ontologique que nous appellerons norme. Ces objets son divers : les institutions, en particulier les lois qui prescrivent la conduite et définissent la sanction ; les coutumes, non codifiées mais diffuses, qui se manifestent de manière objective comme des impératifs sans sanction institutionnelle ou avec une sanction diffuse (le scandale) ; enfin les valeurs, normatives, qui se réfèrent à la conduite humaine ou à ses résultats et qui constituent l'objet du jugement axiologique».

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death "To sack workers by closing a workshop was a sovereign action which implicitly actualized the basic right to kill." (Sartre, 2004, p. 766) and (Sartre, 1963b, p. 484).

It could be concluded that, in general terms, the conception of the law, which is glimpsed in *Cahiers pour une morale* is ratified, from another perspective, in the unfinished *Critique of Dialectic Reason* as a power, a structure, and a function[59]. Or in simpler terms, as an institution of oppression to the service of the dominant class, which makes use of it to make sure that the inertia that maintains its survival as an established group. State authority is instituted on the free consent that the members of the group give to the alienation of their freedom in the name of the law. The law transforms and internalizes the appropriation of power by the dominant classes in the State, which is produced and reproduces in the impotence of the dominated classes. Thus, the law is a terror regime, which is founded in the recognition of the exploited and the force of the oppressors or, it is consolidated in a dialectic relationship between the right/duty of life and death by individual praxis constitutive of collective *praxis*.

5 The law and popular justice

From an emancipatory perspective, Sartre develops a conception of the law tied to popular justice in *Situations VIII: Autour 1968* and *Life/Situations: Essays Written and Spoken*. It should be noted that in the context in which Sartre was writing, popular justice was conceived as a strategy of Marxist revolutionary struggle (Santos, 1979) and (Santos, 1980, p. 243), and especially in the French case with strong Maoist influence (Foucault, 1994b, p. 340) and (Foucault, 1979, p. 45). In this sense, "Soviet Comrade´s Courts, Yugoslav Labor Courts and East German *Konflictskommissionen* are examples of socialist popular justice in European countries" (Engle Merry, 1993, p. 43) and (Engle Merry, 2004, p. 51) [60].

In the first part of *Situations VIII: Autour 1968*, titled "Vietnam: The Russell Tribunal" Sartre strongly defends popular justice. In order to understand Sartrean

[59] In *Being and Nothingness* (1992a) Sartre showed how the recognition of alterity in the relationships in which some else conceives me as an end, that is with a existence legitimated by that fact, that legal recognition is not a factual recognition of my existence. This is where the concept of function emerges: "We insist on our individual rights only within the compass of a vast project which would tend to confer existence on us in terms of the function which we fulfill" (Sartre, 1992a, p. 492) and (Sartre, 1993, p. 510).

[60] Sally Engle Merry's paper, Sorting Out Popular Justice (1993), is of our interest when she argues first, about the polysemic character of the concept of popular justice and additionally, analyzes the main traditions of popular justice that have been configured.

thought at the time this premise is always necessary: "critical appreciation is an intellectual duty" (Sartre, 1973, p. 15). For this reason, John Gerassi convinced Sartre, during the Christmas of 1966, -by the request of Bertrand Russell[61]- to participate in the nascent Tribunal (Gerassi, 1021, p. 13). Sartre's experience in the Russell Tribunal also known as the International War Crimes Tribunal on Vietnam (1966-1967) was his last experience with the peoples of the third world (Cohen-Solal, 2055, p. 588).

The Russell Tribunal was an initiative created by Bertrand Russell, and it aimed at judging, in strict legal terms (not political) [62], the behavior of the American armed forces and its allies in Vietnam, according to international law, which typified war crimes (Sartre, 1973, p. 23.22). The theoretical basis of popular justice was simple:

> Concretely: if the development of history is not directed by the law and morality –which are their products– those two superstructures exert a return action on that development. This allows the judgment of a society by criteria that that society has established (Sartre, 1973, p. 24).

Thus, it is about the recognition of a dialectic character in the law. In this way, before the absence of an international tribunal to judge war crimes[63], as had been the case in the *ad hoc* and *pro tempore* Nuremberg Tribunal, the proposal by the group of intellectuals led by Russell and Sartre was to create a tribunal of popular extraction to judge the conducts that could be qualified as war crimes, using as a reference the Nuremberg laws, the Briand-Kellogg pact (1982), the Geneva Convention and other international instruments: "our tribunal does not aim today at more than to apply its own laws to the capitalist empire" (Sartre, 1973, p. 25). Naturally, Sartre was not naïve, nor was this an idealist experiment (p. 28). The Russell Tribunal did not aim to condemn anyone. It did not even pretend to judge individuals. It wanted to objectively confirm the coherence (or lack thereof) of the United States' international war policy in function of certain legal categories established in international law (p. 50). Sartre was adamant about the fact that it was not about a political or moral trial, but technically a legal trial (p. 26, 27, 28).

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[61] About Bertrand Russell, in 1972 Sartre said: What a bird. An aristocrat that, with age, improved, as good whisky. He created the International Tribunal about War Crimes out of pure conviction at ninety five years old (Gerassi, 2012, p. 254).

[62] Sartre illustrates this position when he differentiates: "There are profoundly nefast aspects of monopolistic capitalism which are, however, crimes in the legal sense of the term (…) But in the Vietnam War there are acts, there are responsible agents, there are laws related to those acts. Our political position account for our ethical indignation, it is about declaring a legal trial" (Sartre, 1973, p. 68-69).

[63] Today the International Criminal Court exists (1998). However, not all countries recognize the Rome Statute.

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From its origin, the Russell Tribunal was heavily criticized. What sense does a tribunal have without the coercive power to condemn? What impact does a tribunal have in international politics? Isn't this an exercise of *petit-bourgeois* legalism? For our purpose, it is enough to cite *in extenso* Sartre's defense as he was accused of the latter. Here, the emancipatory power of the law in Sartrean through is revealed:

> We have been reproached of *petit-bourgeoisie* legalism. It is true and I accept this objection. However, who do we want to convince? The classes that are fighting against imperialism or the much larger sector of the middle class that is today indecisive? It is the small-bourgeoisie masses the ones we must awaken and shake today, because its alliance –even in the internal plane– with the working class is desirable. *And it is through legalism that their eyes can be opened*. On the other hand, it isn't bad to remind the working classes, that they have been often trained not to consider more than effectiveness, that *there is an ethical-legal structure in every historical action*. In the post-Stalin period in which we live it is very important to try to highlight that structure (Sartre, 1973, p. 29) [64].

In other words, just as Sartre would express in *From Nuremberg to Stockholm*, headquarters of the Russell Tribunal: "that reproach should be accepted and accept our legalism. After all, if the petit-bourgeois is legalist why no win him over for the union of the masses against imperialism letting him know that he is covered by legality?" (Sartre, 1973, p. 71). There is but one theoretical basis: paradoxically, bourgeois laws can serve (or not) popular interest (p. 73). So, when powerful states decided to judge and condemn the Nazi regime in Nuremberg, they did it "without realizing, through that initiative, they were condemning themselves for their colonialist practices" (p. 56). According to Sartre, Hitler and Nazism were condemned for taking to Europe the same barbarism that European states and the United States exercised over the countries they colonized. For that reason, given these equal or similar deeds in both cases the same legal norms can be applied as those with which Nazism was judged.

Under this understanding, the law is a useful form of resistance to awaken the petit bourgeois. This is so because despite the political propaganda and even against alienation, the barbarism committed by the United States in Vietnam could be judged from a basic and profound ethical level for the masses: "there is a morality to the masses, simple and revolutionary that before all political education requires that the

[64] Cursives are my own.

relationships between men are humane and condemns the exploitation and oppression as radically bad deeds" (Sartre, 1973, p. 71) [65].

Additionally, we must consider not just the critiques, but also the obstacles raised against the operation of the Tribunal. The Charles De Gaulle government impeded its second session, which was scheduled to take place in Paris. In an unexpected turn of events, the French State denied permission of entry to Vladimir Dedijer (1914-1990) who was to chair the sessions. This event motivated Sartre to write to the then President of the Republic, Charles De Gaulle, asking that Dedijer's entry restriction be lifted. The President's response was swift and started a strong discussion about the nature of justice:

> I should not be teaching you that all justice in its inception and in its execution belongs only to the State (…) That is why the government complies with opposing that a meeting be held in our territory, which would be contrary to precisely what we must enforce (Sartre, 1973, p. 36).

For General De Gaulle, the Russell Tribunal was a vile example of the law and its international uses, which was why the State had to impede its operation in French territory.

In an interview with *Le Nouvel Observateur,* Sartre publicly replied to De Gaulle denouncing the error the president was making in believing that the government was above the State and its people, because, just as Sartre conceived it, true justice should extract its power from the masses (Sartre, 1973, p. 41). Sartre clarifies to De Gaulle that the intention of the Russell Tribunal was never to replace any existing organ of justice, as it only pretended to conclude after the reception of testimonies and the analysis of documents by the jury, if certain actions of the United States army could be qualified as war crimes or not, and in case they could, indicate a sanction that for that same crime had been assigned at Nuremberg. The Tribunal was born out of a void and a calling, but its legitimacy derived precisely from its impotence and universality (Sartre, 1973, p. 58, 74, 75, 76).

As De Gaulle pointed out with contempt, the Russell Tribunal was an organization of individuals easily interchangeable with any other human beings (Sartre, 1973, p. 62, 66), "who have taken the initiative and who inform while they inform

[65] It must be noted that it is about a minimal moral base that guarantees the force and cohesion of social movements, and which does not respond to a superstructural configuration (Sartre, 1973, p. 72).

themselves, to remind the states that the masses are the source of all justice (p. 43): in summary, particulars with "the simple power to knowingly decide yes or no" (p. 62).

For that reason, unlike state justice, the Russell Tribunal had its roots in the people: "judges exist everywhere, they are the people" (Sartre, 1973, p. 60). The masses claimed through popular justice the "universalization and objectification of their ethical indignation. Because, in this case, ethics finds its end and its full realization in jurisdiction" (p. 75). Popular justice shows a revolutionary jurisdiction, in which the masses are the ones judging and deciding who is to be judged, in such a way that the trial and its objectivity belongs only to the people (p. 76): "no one is excused from ignoring the law of the people" (Sartre, 1973, p. 249) [66].

On this point, in the distinction between state and popular justice, provoked mainly by the discussion with De Gaulle, Sartre wrote *Justice and the State*, a text, which was published in *Life/Situations: Essays Written and Spoken*. The text is a kind of defense against the accusations of the French government that Sartre committed "crime of opinion". According to Sartre he was accused, because he was the director of a popular periodical with Maoist connections: *La cause du peuple*. According to Sartre, bourgeois justice is by essence state justice:

> Thus the judicial body was, and has remained tip to the present, a bureaucracy appointed by the state and backed up by the state's "forces of order" -- the police and, if need be, the army. Bourgeois justice seems, as de Gaulle said, to belong to the state both in principle and in practice (Sartre, 1977a, 173) and (Sartre, 1977b, p. 170).

In the genesis of this conception of justice as state justice, Sartre notices two basic problems. Firstly, it presupposes a distinction between the government and the State, which is not always easily traceable to the point that sometimes it seems absurd to talk about judicial independence. Secondly, bourgeois justice forgets that justice "originates not in the state but among the people. For the people" (Sartre, 1977a, p. 173) and (Sartre, 1977b, p. 171) and is expressed as a profound feeling of popular conscience.

To Sartre, as he had already argued in *Autour 1968*, "the source of all justice is the people" (Sartre, 1977a, p. 173) and (Sartre, 1977b, p. 171), given that while bourgeois bureaucratic justice perpetuates the conditions of exploitation, popular justice "is primitive justice, which is the profound movement of the proletariat and the common

[66] In *Autour 1968* (1973) another example of popular justice can be found, in the article about le tribunal populaire de Lens.

people asserting their freedom against proletariatization" (Sartre, 1977a, p. 174) and (Sartre, 1977b, p. 172). According to Sartre, popular justice is the choice of a profound and true justice (Ibíd) [67]. In this way, keeping in mind that justice is a cultural product, "there are thus two types of culture and two types of justice. The bourgeois culture, which is complex and diverse, is still founded on the oppression-repression and exploitation that it requires. The popular culture, unrefined, violent, and hardly differentiated, is nevertheless the only valid one, for it is based on the demand for absolute freedom" (Sartre, 1977a, p. 177) and (Sartre, 1977b, p. 175).

Unlike bourgeois justice in which "the judge feels that he merits his power by his very rarity" (Sartre, 1977a, p. 186) and (Sartre, 1977b, p. 184), in popular justice power does not emanate from any type of hierarchy. Bourgeois justice treats those who appear before it "No matter how impartial he might be, he will treat those who come before him as objects and will make no attempt to understand the subjective motives of their acts as these would appear to the defendants" (Sartre, 1977a, p. 188) and (Sartre, 1977b, p. 185). Moreover, not only does the subject of bourgeois justice objectify himself to feign the trial, but also the judge objectifies him to fulfill the law, which sometimes he would not even accept himself. Sartre said: "he fact is that judges are given cases to decide which they are not allowed to know very much about" (Sartre, 1977a, p. 190) and (Sartre, 1977b, p. 187) [68]. In that sense, Sartre will ask himself: what the judge thinks when he gives his sentence. Is he really abstract, as I have said, and unaware of the truth, or has be allowed himself to be won over by the politics of the regime? (Sartre, 1977a, p. 193) and (Sartre, 1977b, p. 190).

In this way, the feigned judicial impartiality is at least a class impartiality even when there are few judges who resist and preserve their independence from the government. Bourgeois judges are culturally predisposed to condemn revolutionaries (Sartre, 1977a, p. 195) and (Sartre, 1977b, p. 192). And in the worst case, bourgeois justice becomes offensive when it deliberately ignores the guarantees established in it through the falsification of the laws (p. 186).

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[67] *Cf.*, "It is about choosing and staying true to that choice: that is what I have done" (Sartre, 1973, p. 22).

[68] In similar terms, according to Ortega y Gasset (1983): "He who judges does not understand. To the judge it is precise to previously renounce heroically the understanding the case presented at the trial in the inexhaustible reality of its human content" (p. 343). The judge's knowledge is restricted as the aim is to reduce one specific moment the knowledge of truth: "But the judge wanted the whole truth concerning an infinitesimal incident: were these two men in such and such a place? And none of us could understand why the event was not dealt with in its totality -- that is, by starting with government and management policies. To tell the whole truth about an infinitesimal instant is a pure contradiction. Truth develops over time. In a closed, limited instant, there can be no truth" (Sartre, 1977a, 192) and (Sartre, 1977b, p. 189).

Right now, the conclusions of the Russell Tribunal about legal responsibility (genocide[69], forbidden weaponry, cruel and inhumane treatment, hostage torture) of the war policy of the United States in Vietnam[70] are of little matter. It is relevant to say that according to Sartre, in general terms the effects produced by the Tribunal helped the rise of a young left that was crystalized in May of 1968. In 1972, Sartre remember that is was about a kind of popular tribunal, but of "bells", by the big names involved; anyway, in the end, as Sartre would recognize, they defended that the capitalist law was a farce, a way of subjugate the poor, the needy, the weak, the righteous (Gerassi, 2012, p. 316).

What matters is that the enterprise of this chapter, is to set the basis for a thesis that, in my opinion, is the most important: the emancipatory potential of the law is expressed in popular justice as a form of legalism that facilitates the awakening of the petit-bourgeois, promoting awareness and the compromise of it with liberation. It is also useful to remind those who fight daily for that liberation that behind every historical action it is possible to see a structure and for that reason a way of judging, a legal character.

6 Final considerations

Throughout this text, I have tried to outline the critique of the concept of the law in the works of Jean-Paul Sartre in an introductory manner. Thus, I have postponed deepening in some aspects. However, it is suitable at this time to formulate some final considerations that, far from closing the matter, aim at opening it for later investigations.

First, although it is not possible to say that there is one univocal concept of the law in Sartrean thought neither can it be concluded that his conceptual development is incoherent or contradictory. In *La théorie de l'État dans la pensée Française d'aujourd'hui*, after a thorough analysis of the main theoretical currents of the law in France, Sartre reflects on the challenges of the law and of state sovereignty from a realist perspective. This work written in his youth constitutes Sartre's first intuition and allowed him to understand the paradoxical and dialectic character of the law in the framework of the relation between idealism (what should be) and realism (what is). The

[69] *Cf*., "In this sense, imperialist genocide cannot be radicalized: because the group you want to reach and terrorize, through the Vietnamese nation, is the human group in its totality" (Sartre, 1973, p. 95).
[70] The conclusions of the Russell Tribunal can be found in (Russell, 2009, p. 697;and Duffet, 1968).

trail of though of this dichotomy was continued in *Cahiers pour une morale* and especially in the sixties in the conception of popular justice as a criterion of "the good law". In this way popular justice is a realist vision and at the same time an "idealist" vision of the law; realist, because it sets its theoretical basis in dialectic materialism and the crisis of bourgeois law. But, that the same time, it is about an idealist view of the law, as popular justice is presented as a deliberation instrument of the oppressed classes. In this regard, maybe it would be better to understand popular justice as a realist and utopic (not idealist) conception of the law: "but, as it was once noted by Sartre, it is important not to reduce realism to what exists" (Santos, 2010, p. 116).

Second, *Cahiers pour une morale* constitutes an ontological critique to the constitution of the law. Reflections of this philosophical rigor are scarce in our literature. From this perspective, main themes of philosophy and the philosophy of the law are studied: freedom, dignity, slavery, the configuration of subjectivity for the law, violence, human rights, what is and what should be. These matters are debatable, but still important today. In this way, they suggest to rethink the law in a counter hegemonic way using deep philosophical knowledge. The critique of the law as negative freedom, as the negation of the being and the detotalization of man, shows a crisis in the notion of the law, but not in the law itself. To sum up, it is a view of the law from the healthy and critical distance of philosophy.

Additionally, the *Cahiers* show a transit between paradigms, which as such, require delimitation and, which contribute to the discussion between the dialectics of change and social regulation. While in *Cahiers* violence is the only form of deliberation of the oppressed class, in the conception of the law as popular justice Sartre adds petit-bourgeois legalism. In other words, while in the forties Sartre denied the law any emancipatory potential, twenty years later he recognized it in popular justice. In this way, *Cahiers* advanced from a phenomenological ontology what would be later developed from a dialectic materialism view. *Cahiers* carefully defines a series of premises that are less developed in *Critique of Dialectic Reason.*

Third, *Critique of Dialectic Reason* systematically explains the historical process of formation of the law in the dialectics between individual *praxis* and collective *praxis*. In this relation, the law is a historical and social product, which exerts a mutual dependency on society. The social value of the law as an institution of terror established to guarantee the inert survival of the group is correlative with the legal value of society as consented mutilation of individual freedoms. In historical terms some annotations,

which are visible in earlier texts, are summarized. Thus the concept of function, of vital importance in Duguit's theory and heavily criticized by Sartre, is newly analyzed in the insoluble pair right/duty in *Cahiers pour une morale* and in *Critique of Dialectic Reason*. The law is to fulfill the duty, that is, the function, which detotalizes man in a gear. To guarantee the operation of the social apparatus, the force of the law imposes itself through authority and through a terror regime applicable to everyone who stops fulfilling this function, that is who betrays the group. The institutionalization of the law, that is the prescription of a conduct tied to punishment, finds its basis in the right/duty of life and death from which the dominant class produces and reproduces oppression in the face of the oppressed class' impotence, which is forced to recognize the law of the oppressor class.

If one analyzes one of Sartre's early literary texts, it is possible to sum up Sartre's position regarding the law taking into account that it combines phenomenological ontology with dialectic materialism. I believe that in The Childhood of a Leader (1969), published in 1939, we find a masterful summary of the Sartrean conception of the law. Here, Sartre tells the story of Lucien Fleurier, a child destined to become, as his father did, a great leader. The transformation into a leader is consolidated once Lucien, as an adolescent, joins an anti-Semitic political organization and hits a Jewish man. After becoming conscious of his being in the world, that is, after defining himself as a leader, an excited Lucien reassures himself:

> *'I HAVE RIGHTS!' Rights: Something like triangles and circles: it was so perfect that it didn't exist. You could trace thousands of circles with a compass in vain, you could never make a single circle. Generations of workers could as well scrupulously obey the commands of Lucien; they would never exhaust his right to command; rights were beyond existence, like mathematical objects and religious dogma. And now Lucien was just that: an enormous bouquet of responsibilities and rights. He had believed that he existed by chance for a long time, but it was due to a lack of sufficient thought. His place in the sun was marked in Férolles long before his birth. They were waiting for him long before his father's marriage: if he had come into the world it was to occupy that place: 'I exist," he thought, "because I have the right to exist' (Sartre, 1969, p. 143)*[71].

[71] Due to its importance, I cite the original: «J 'AI DES DROITS ! » Des droits! Quelque chose dans le genre des triangles et des cercles : c'était si parfait que ça n'existait pas, on avait beau tracer des milliers de ronds avec des compas, on n'arrivait pas à réaliser un seul cercle. Des générations d'ouvriers pourraient, de même, obéir scrupuleusement aux ordres de Lucien, ils n'épuiseraient jamais son droit à commander ; les droits, c'était, par-delà l'existence, comme les objets mathématiques et les dogmes religieux. Et voilà que Lucien, justement, c'était ça : un énorme bouquet de responsabilités et de droits. Il avait longtemps cru qu'il existait par hasard, à la dérive : mais c 'était faute d'avoir assez réfléchi. Bien avant sa naissance, sa place était marquée au soleil, à Férolles. Déjà -bien avant, même, le mariage de son père- on l' attendait; s'il était venu au monde, c'était pour occuper cette place : « j'existe, pensa-t-il, parce que j'ai le droit d'exister» (Sartre, 1939, pp. 127 – 128).

From this small literary fragment it is possible to conclude, I insist conjugating the two great moments in Sartrean philosophy, that the law: (i) just like geometrical figures and mathematical objects, the law embeds itself, in its perfection, outside the world of the being, denying its existence, if it were, beyond existence. The law responds, above all, to an ontology of negativity; (ii.) but it is also an instrument for the preservation of the *statu quo*, which means, on the one hand, that the oppressed classes, the workers, only have the duty of obeying, and on the other hand, that the oppressive classes, the leaders, have the right to order or, what is the same, an inexhaustible right to exist. To sum up, the law *is* not, it is something we *have*[72]. Denying reality in the name of what should be can be a violent tool in favor of the powerful. Nevertheless, as we will see, in some occasions, this violent tool, which we call the law, can be used by the oppressed classes with an emancipatory purpose. This, according to Sartre, is expressed in popular justice.

Fourth, popular justice is constructed as a response to that impotence, as a way of empowering the oppressed classes. Here, the emancipatory potential of the law (*petit-bourgeois* legalism) becomes clear, a topic of great interest to the sociology of the law. According to Sartre, the law can be useful to the oppressed masses, who find in it a way to struggle or resist against the oppressors. Popular justice seeks that the dominant class regrets the formal concessions granted on the oppressed. So, it is about fighting against the law through the same law to reveal what is hidden in it: the bourgeois impartiality of the judges, the objectification of the trial, the impossibility to judge, the falsification of the law. Without a doubt, this assertion, supposes a paradigm shift in comparison with the position defended by Sartre in *Cahiers pour une morale*.

It could be said that for Sartre, the emancipatory potential of the law takes on a strong and closed character, unlike the contemporary tendency inclined to adopt a broad and weak conception of that potential: "The law does not hold revolutions: the opposite occurs: the law impedes revolutions. However, some uses of the law under the right circumstances produce important and even revolutionary social changes" (García Villegas, 2014, p. 215), basically, as "the struggle for the law and for rights is not a struggle destined to the inevitable victory of the dominators" (García Villegas, 2014, p. 231). In that sense, in Sartre's case, it is about an open potential, because besides the partial victories, the utility of petit bourgeois legalism consists in obtaining the

[72] In Spanish: el derecho no *es*, sino que se *tiene*.

liberation of the oppressed classes, awakening the petit bourgeois and reminding the masses the legal character of historical events. However, it is a strong potential because petit bourgeois legalism, which is associated with violence, is not reduced to small victories but on the contrary it aims at achieving the absolute liberation of the oppressed.

One might ask: what sense does this emancipatory potential of the law make today? How could that potential be reinvented to answer the challenges posed by today's society? In any case, today Sartrean though could not be accepted in uncritical and ahistorical terms. Despite that, to think against Sartre it is necessary to think with Sartre, even if not like Sartre. In this way, installed in a situation (historical and dialectic) violence is rejected as an instrument of social change and the presence of legal regulation is accepted in nearly all spheres of social life (Santos, 2009, p. 476). Also, it would be necessary to suspect the social categories of the bourgeoisie and the masses, because if it is necessary to preserve them, they must be resignified.

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