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ARTÍCULO DE INVESTIGACIÓN

The rationality of solidarity

La racionalidad de la solidaridad

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ABSTRACT In this article we contend that, given the aesthetic fact of human imperfection, it is possible to imagine that rationality emanates from the value of solidarity. We identify an evolution of the principle of good faith towards the principle of solidarity. Thus, dignity, the foundation of all rights, reaches its highest expression.

KEYWORDS Beauty; law; principles; rationality; solidarity.

RESUMEN Este trabajo argumenta que a partir del hecho estético de la imperfección humana es posible imaginar que el objeto de la racionalidad brota del valor de la solidaridad. Identifica una evolución del principio de buena fe hacia el principio de solidaridad y así la dignidad, fundamento de todos los derechos, alcanza su mejor expresión.

PALABRAS CLAVE Belleza; derecho; principios; racionalidad; solidaridad.

Introduction. The aesthetic as an inspiration for rationality

One of the most intense discussions to take place in recent years in the field of social science focuses on what is to be considered rational and what is not. The general idea is that rational is "that which can be calculated and measured". Lord Kelvin famously stated that “when you can measure what you are speaking about, and express it in numbers, you know something about it; but when you cannot measure it, when you cannot express it in numbers, your knowledge is of a meagre and unsatisfactory kind: it may be the beginning of knowledge, but you have scarcely, in your thoughts, advanced to the stage of science”[1]. Another approach is to consider the rational to be the process of concluding from the known effects of natural and social phenomena, their unknown causes; and from the known causes and conditions of phenomena, their unknown effects. Rationality is also frequently considered to be an *a priori* possibility of knowledge, and an accurate and valid measure of all scientific work. However, there is no explicit agreement on the concept of rationality. Scientists make great efforts to comply with the changing fads of rationality, whatever they may be[2].

Like every other body of knowledge, the law struggles to conform to these changing standards. With difficulties and some defeats, but with achievements nevertheless, the law can be said to rank as scientific.

In this context, the present paper aims to establish the relationship between the Law on the one hand, and a concept of rationality linked to the aesthetic on the other. Thus, our first statement is that aesthetics, rationality, and the Law are related.

We find their intersection, at least in Western cultures, at the beginning of philosophical thinking. *Antigone* is an unalterable paradigm. This undoubtedly beautiful story relates the attempts of Antigone and her sister Ismene to bury their brother’s body, against the orders of Creon, King of Thebes. They place moral values above human laws – thus touching on a problem that we still encounter in legal theory. Since then, legislation and poetry have worked side by side to observe nature with amazement.

The work of Jorge Luis Borges also helps to develop this idea.

Borges postulates: "Music, happiness, mythology, faces worked by time, certain twilights and certain places, want to tell us something, or they said something that we should not have missed, or they are about to say something; this imminence of a revelation that does not take place, is, perhaps, the aesthetic fact"[3].

1. TAL (2020) p. 4.

2. LAJE (2022) p. 15.

3. BORGES (1990) p. 13.

Thus, beauty is something that we sense but cannot fully understand. Likewise, rationality without beauty also appears somehow out of focus. The carefree manifestation of beauty before the observer's eyes sets reason in motion. Aesthetics is the starting point of reflection, and the origin of knowledge and speculation. Knowledge is not restricted to rationality, since "civilized beings scrutinize the world with a certain generality of understanding"[4].

The second statement of this article is that science is a construction of reality that is fine-tuned by the scientific community. The scientific method prepares its object through lengthy semantic work and offers specification of its contexts until it raises the status of a public object.

From Vico's proposal – that human beings know according to their praxis – to Kuhn's formulation – that scientific communities share certain analogies – it is argued that the process of the creation of knowledge arises from analogy based on shared experience. "Meandri has shown that analogy opposes the dichotomous principle that dominates Western logic. Against the alternative 'either A or B', which excludes the third position, an analogy constantly asserts its *tertium datur*, a stubborn 'neither A nor B'. An analogy intervenes, then, in the logical dichotomies (particular/universal; form/content; legality/exemplary, etc.), not to complete them in a superior synthesis but to transform them into a field of forces traversed by polar tensions in which, as it occurs in an electromagnetic field, they lose their substantial identity"[5].

Heidegger's ideas help to understand this: "A Greek temple is built on a rock so that its god is present. The subject and the object-temple, are linked, which gives meaning to the paths and relationships it evokes, that is: life and death, blessing and curse, victory and misfortune, prosperity and poverty. The temple can be seen facing a storm or reflecting the sun just by being there. The brightness of the day, the air's clarity, and the night's darkness can be seen through it. Also, the trees and the grass, the eagle and the ox, and the serpent and the locust first enter their distinctive form and appear as they are, in contrast to the temple's structure. The early Greeks called this rising and arising of all things φύσις (nature). The temple's construction allowed the god to be present there"[6]. "In these conditions, what we all (hyperbolically) call our reason is nothing more than the background accumulated in our conscience from our upbringing, our education within the culture where we live, and the experiences and reflections of our personal history; and what she tells us or yells at us is the prescriptive result of all that background"[7]. Thus we "discover that rationality is everyone's heritage"[8].

4. WHITEHEAD (2022) p. 16.

5. AGAMBEN (2018) p. 18.

6. HEIDEGGER (1992) p. 312.

7. GUIBOURG (2020) p. 184.

8. QUINTANILLA FISAC (2021) p. 26.

Following Rafael Echeverria, we understand that language makes humans the particular type of beings they are; human beings are linguistic beings, beings who live in language; and language is the key to understanding human phenomena[9].

This thought helps us notice that the primacy of writing, like another temple, marks the reality in which rationality develops. At each stage, the code of natural languages, the code of writing, and the code of technique determine our perceptibility. On the other hand, scientific knowledge is de-centered from society and is re-focused on the universal operation of techniques. Techniques, then, accompany linguistics in the position of mediators for the interpretation of reality.

The word "technical" may be defined in two ways: as a means to an end or as a human activity. These definitions are correlative, since setting ends and procuring and using equipment and tools for an end come together in the same human condition. For all these operations, Heidegger used the word technology. It enables us to perceive reality through a calculable complex of forces that allows us to make correct determinations and predictions. The danger and the natural temptation are to think that this manifestation occurs only within the order that the scientist imposes on things – without realizing that, in this way, science restricts the possibility of a broader manifestation.

In our times, one of the most critical issues that the scientific-legal community must necessarily deal with is the relationship between human dignity and the impact of new technologies. Technology itself imports a set of technical knowledge with practical application, which operates under exponential growth, shortening the periods in which such a profound transformation occurs, defeating social structures, and creating the need to adapt legal norms frequently. We are constantly offered more and more possibilities to access new technological-digital tools that allow us to operate in a digital world. The technological impact causes new rights to appear.

The Law, as a technique, allows a specific manifestation of society, and is constitutive and regulative of human actions. As such, there is a certain limitation intrinsic to the law. However, the manifestation of the world is free, and what is beautiful never ceases to manifest itself, constantly arousing curiosity – it is the manifestations of the beautiful that drive rationality.

There are a multitude of accounts of how law comes into being. One of these is that human beings tell each other beautiful stories, enabling the manifestation of the rational. To the extent that they are convincing, they implement social practices, and one of their fruits is law.

9. ECHEVERRIA (2021) p. 31.

Our third statement is: The Law is undoubtedly a social practice, "an enterprise that tries to achieve a certain purpose"[10]. Furthermore, it can be argued that its rationality springs from the beauty of the human condition's fragility. The beauty of human imperfection awakens empathy towards others in the form of caring behavior. The beauty of reason based on such axiological values may build a unique legal system centered on solidarity. Rationality within this system consists in placing human dignity in the hands of others. Thus, solidarity is the utmost expression of that dignity, by virtue of the fact that it offers binding reasons for action.

Building a theory of legal solidarity from the first normative principle

The jurist's task begins by recognizing or ascertaining what makes someone or something different. It is so because what is legal always refers to criteria, a mental state by which objects are discriminated into classes. There are several ways to perform these classifications, which are, of course, the subject of fierce controversy.

Those who see law as a tool for social dominance see only power relations between individuals and groups. For them, legal categories are only manifestations of such power. On the other hand, those who seek in law a system for interpreting behaviors according to criteria adopted in advance consider the facts of reality as legal or illegal based on their deontological position. In this system, formal criteria and laws of logic play a fundamental role in determining the validity of norms. This approach frequently maintains a relationship between law and rationality, since law supposes action by reason, as opposed to action by force.

However, the possibility of establishing a consistent relationship between reason and legal norms is an arduous task that easily eludes the jurist. As Jaime Nubiola says, "searching for incorrigible certainties is a delusion of reason because a fundamental characteristic of human knowledge is its fallibility: errare hominum est"[11].

On the other hand, it is possible for human reasoning to offer credible and acceptable principles of law, and on that basis reach necessary conclusions regarding accepted principles. One such principle is the "first normative principle".

The first normative principle, legal principles, and norms

The first normative principle, which is a central category in the history of legal philosophy, organizes the structure of practical reason. It has the same purpose as the "principle of non-contradiction" in theoretical knowledge. It differs from both "legal principles" and norms. They are all related, but not under a causal relationship, nor by pure logical deduction.

10. ATIENZA (2018) p. 17.

11. NUBIOLA (2010) p. 3.

The first normative principle does not allow norms to be concluded without resorting to something external to the principle itself [12]; other essential elements must be added. Because it is abstract, it is not a concrete norm; it expresses the directness of human actions, but it is not a moral or legal norm since it does not prohibit or authorize any specific conduct. It is, instead, a general principle of rationality[13].

Grisez states, following Thomas Aquinas, that the first normative principle is: "one must live according to reason"[14]. Thus stated, this principle differs from Kant's categorical imperative in that it is gerundive. Kant's formulation forbids treating another rational being as a means only, and not at least simultaneously as an end[15].

González Peña indicates this idea, that the first normative principle differs from Kant's imperative, very clearly. He adds that the first normative principle does not allow a life without direction[16]. This axiom, which, as we have said, occupies the same place in practical knowledge as the principle of non-contradiction in speculative thinking, only directs us to act towards some intelligible goal. But then, the same principle may also be expressed as: *live in search of an end*.

The Kantian epistemological approach does not help to establish the object of the first normative principle because both concentrate on formalistic uniform prescriptions. Instead, an experiential approach based on empirical contrast and discussion among equals suits the concept of rationality better.

Reasonable behavior arises from comparing possible options. It is not necessarily a first epistemological principle but rather one that springs from novel creations in a constant aggregation of visions, beliefs, and values. Being rational is the ability to pursue an end/good by self-persuasion rather than by habit or force in the context of a given group.

The object of the principle that states that one must live according to reason depends on the criteria to which any group of people feels obliged by their identification as members of that group. Therefore, they expand their sense of solidarity, not as an obligation, but out of empathy. Thus, belief in the beneficial effects of solidarity comes from the awareness of others as part of a single group[17]. Again, in this context, solidarity is an end/good capable of participating in the social conversation with notable advantages over other possibilities.

12. MACIA MANSO (2005) pp. 511-576.
13. CONTRERAS AGUIRRE (2014).
14. GRISEZ (1965) p. 358.
15. ATIENZA (2022) p. 37.
16. GONZALEZ PEÑA (2018) p. 660.
17. RORTY (1994).

It is essential to note that this is not a relativistic theory. On the contrary, it maintains that the individual does not have a pre-linguistic consciousness to which the language must adapt, and that there is no deep perception of how things are. At the same time, it states that people have firmly-held beliefs about good and evil; consequently, for them, not all is the same. Therefore, no person can be genuinely relativistic since his beliefs are not the same for him as those of others[18]. Manuel Atienza thinks alike when he defends the need for minimum moral objectivism to oppose relativism. He defends the thesis that moral judgments have a claim to correctness. To oppose absolutism, he states that moral judgments (such as those of the courts of last instance) incorporate ultimate reasons (practical reasoning); they are open to criticism, and therefore fallible[19].

The object of rational action established collectively in one given social group is the consequence of science and art. Note that science has no privileged character over art as a source of suggestion as to what humanity should make of itself. On the contrary, rationality, in contact with beauty, is responsible for crystallizing social hopes, making them a path for the future.

The absence of a final answer leads to the search for better answers: a context in which solidarity is also that imaginative capacity to see more and more people as being like us, and not as strangers, integrating them into our circle of belonging.

Therefore, it would be an appropriate preliminary conclusion that the first normative principle is indicative of an action that is mediated by the community in pursuit of an end. Democratic debate adds to the intrinsic validity of the moral and legal norms that derive from it, private reflection being a synthesized version that arises from social deliberation.

The idea of Solidarity

Merriam-Webster's dictionary defines solidarity as a "union that produces or is based on a community of interests, objectives, and standards".

Current philosophical discussions have emphasized the importance of solidarity in connection with every major social, legal, scientific, and technological break point. As early as 1987, within the framework of the UN, the president of the World Commission on Environment and Development (WCED), Gro Harlem Bruntland, presented the report *Our common future* in which the principle of solidarity is expressed in terms of sustainability.

18. RORTY (1991) pp. 23-62.

19. ATIENZA (1991) p. 50.

It is particularly the case for health and biomedicine, as well as genetic engineering of humans, but also participates in information technology, universal digital inclusion, privacy rights, and data protection.

The idea behind every such claim is that solidarity may serve as a corrective to the emphasis on individual choice and autonomy currently prevalent in social-political and legal trends with a high cost to the wider social grouping. Collaborative behavior and trust mechanics are not only moral and legal trends but also technological phenomena of the most immediate importance. Technology spontaneously moves individuals to *share*, *link*, *group*, *save*, *collaborate*, *torrent*, and *join* in spaces and ways not previously thought of.

The information revolution is changing the world profoundly and irreversibly at a breathtaking pace and across an unprecedented scope. Any person who agrees to participate in the Information Technology system allows reciprocal interaction, and implicitly admits reciprocal effects and interference. There is no other way to conceive the information era. Certainly interaction does not equal solidarity, but solidarity is necessarily present in the fabric of technology and the Law.

Most legal traditions have elaborated the idea of solidarity primarily on behalf of the state. It is the State's responsibility, generally, to watch over social needs and equality. Likewise, constitutional law and jurisprudence have developed the idea of solidarity among different agents. Here, we use a slightly different approach to explore the idea of solidarity. It is about making individuals, not the State, responsible for the needs of others. The paradigm is solidarity within the family, where the members take care of each other.

The importance of the Solidarity Principle

Consensus on core values, such as solidarity, is essential to the promotion of human dignity. It is one of the basic human experiences, as it is generally acknowledged that membership in a group affords greater protection. Children, the weak, the sick, and the elderly have always depended on solidaristic support from their immediate or extended family, as well as their neighbors. Caring communities have been the longstanding answer to communal dangers.

The concept is not always clear, and its role frequently remains quite obscure. Scholars throughout history have addressed it in different ways, but if considered from the modern point of view, it is easy to identify it as a synonym of fraternity, and to see that it is directly related to personal freedom and equality. In this regard, Alpa argues that the modern concept of solidarity was first stated by the the thinkers of the Enlightenment, Voltaire and Rousseau, who demonstrated how – from the state of "noble savage" – in addition to the family, man creates the community, appealing to feelings rather than to reason. He also refers to Kant who, with different accents and

on the basis of different arguments, also theorizes the birth of society from a secular perspective: his most famous phrase in this context is taken from the pages that theorize perpetual peace: "The solidarity of the human race is not only a sign beautiful and noble, but a pressing necessity; a 'to be or not to be'; a matter of life and death"[20].

One person is more inclined to be supportive of another if that person is considered worthy, equal, and free. Thus, solidarity is a value with the same status as freedom and equality. Solidarity is one of the founding values of many legal systems, such as the Charter of Fundamental Rights of the European Union, and is considered an essential ethical value because it is a manifestation of support, help, and cooperation with peers, and as such with people that are charged with merit and respect.

Max Ferdinand Scheler, a highly respected philosopher of our time, developed the idea of solidarity together with his theory of phenomenology. Arguably he has gone furthest in developing the idea of solidarity. He defines it as the reciprocal relationship between the whole and its parts. He rejects the presumed starting point of so-called *other minds*, a starting point that posits one mind over and against another, assuming that we are first alone and then enter into relations with others. For him, "the consciousness of oneself as a self and as a person is always experienced within the context of a 'member of a totality'". Scheler distinguished the principle of solidarity found in life communities from the principle of summation found in societal relationships. He formulated his idea of solidarity as the principle that unites social groups according to their members' qualitative degrees of participation[21].

Organized societies are strategically based on cooperation as the natural and spontaneous behavior of human beings. Legal systems include solidarity within their normative order, describing, classifying, and giving it legal consequences. Thus solidarity is one of the essential foundations on which legal order as a whole is built.

Solidarity regarding Public and Private law

Every country shapes the relationship between public and private law differently; nonetheless, general justice is widely conceived to protect certain weaknesses arising in otherwise equal parties. In many countries, solidarity has historically been outside the content of private law, which is arguably the principal set of rules for the normal progression of capitalist society based on its logic of individuality, property rights, and profit-making activity.

We do not agree with this idea. We understand that the principle of solidarity is not only a matter of public law; it is important in private law as well, and becoming more and more so. Flourishing markets rely on healthy, safe, and sustainable environ-

20. ALPA (2022) p. 10.

21. RAINER R. ALTAMIRANO (1989).

ments. Thus, it is sound legal reasoning to hold that transparency in the decision-making process and other forms of participation in the legal debate have a greater influence on the content of private law than on other areas of the Law. Private law adapts pragmatically to social change, while government intervention hinders such change.

Private law has also been an efficient instrument of major social development. Good examples are labor law, which addresses the needs of workers, and consumer law, which balances inequalities in the market of goods and services. Likewise, there has been another slow but constant incorporation of public law into private law through the process known as "constitutionalization of the law". In this process, the *courts* have been a key agent, allowing further applications of social concepts and new ways to conceive what counts as justice.

This process certainly allows for the development of the solidarity principle within the legal system as a whole, and private law in particular, generating compensation for certain deficiencies of practice of the Law based on purely individualistic approaches.

The German *Sozialstaat* and the Italian Constitution

Solidarity is major legal principle of the German democratic and *social* federal State, the *Sozialstaat*, based on two clauses of its Basic Law or Constitution (*Grundgesetz*). Art. 20 of the Basic Law defines Germany as a social federal State, and art. 28.1 requires the individual states (*Länder*) to adopt a constitutional regime faithful to the principles of republican, democratic, and social government based on the rule of law. In German this is called: *sozialer Rechsstaat*. Thus *Rechtsstaat* and *Sozialstaat* join in a higher unity under the Basic Law. Likewise, within the framing of the Basic Law, the constitutional order of the *Länder* must conform to the principles of a republican, democratic, and *social* state governed by the rule of law.

The social nature of the German State reflects the conviction to affirmatively promote a caring, sound, healthy and prosperous society. However, the Basic Law is largely silent on the content of what should be understood by a social State at the federal level. It has been the role of the Constitutional Court, which has a long-standing tradition on *Sozialstaat* matters, to constantly uphold the State's duty to establish a just social order and observe the legislature's wide-ranging discretion on the nature and extent of social welfare, as well as the means by which it is promoted and delivered.

The German State assumes responsibility for the well-being and affairs of its citizens, thus evidencing its supportive nature. These obligations are required from the three branches of government, and particularly from the judges who, within their jurisdictional power and when they have to expound the meaning of the law and apply

it in particularly complex cases, must consider that solidarity has special importance in the making of the German social state[22].

The German political, social, and economic system is often described as a "social market economy" (*soziale Marktwirtschaft*), in which free markets work together with a socially conscious State under the assumption that the individual is in a permanent relationship with wider society.

In the German *social* State, individuals are also responsible for the well-being of their fellow members of society, and may frequently be legitimately required to exercise responsibility for the general welfare. Art. 20 of the Basic Law has added some complexity to the system by stating that judges are bound by "law and *justice*", suggesting that justice might not always be identical to the written law. The Constitutional Court has interpreted this phrase to mean that, under certain circumstances, law can exist beyond the positive norms enacted by the State. The constitutional legal order is a meaningful, all-embracing system, that sometimes functions as a corrective of written norms. The task of the courts is to find this law and make it a reality in binding cases.

The judge's freedom to creatively develop the law is limited; however, it grows with the aging of legal codes, since this norm always remains bound to the context of social conditions and socio-political views within its sway.

In the Italian Constitution, solidarity is highlighted in the opening rules, where Article 2 provides that the Republic "requires the fulfillment of the mandatory duties of political, economic and social solidarity." As a mandatory statement, it is reasonable to believe that everyone must take care of the problems of the community, and therefore that everyone must fulfill their duties of solidarity.

Guido Alpa states that the individual, the community, and the State are therefore the pillars on which solidarity is deployed in Italy, precisely because it is contained in a normative text. The solidarity principle is endowed with the character of coercion, combining essential rights with duties towards the community[23] .

The Italian legal system holds solidarity to be a founding bond between all social formations. The protection of rights is balanced by the duties of the individual towards the community and the State. From the combined provisions of Articles 2 and 3 of the Italian Constitution, it can therefore be deduced that the State undertakes to remove obstacles of an economic and social nature so that the principle of equality is also respected in its substantial aspect and to ensure a dignified existence for all.

22. STEINER (2013) p. 1355.

23. ALPA (2022).

The general principle of solidarity in Argentine Law

The School of Legal Solidarity, founded and promoted by Professor Dr. Marcos M. Córdoba, maintains that solidarity constitutes a moral standard of Argentine society, resulting from its social and legal evolution and ways of life, customs, and knowledge. The "School" states, furthermore, that as a social and moral standard, solidarity is a general legal principle.

Solidarity is an essential criterion at the heart of numerous legislative solutions, and a guideline for interpreting doubtful cases. Indeed, in Argentina, certain areas of the law include the principle of legal solidarity as a critical element, but the Argentine legal system does not yet expressly include solidarity as a general principle of law. Thus, unfortunately, Argentine law is weakened and impoverished due to the lack of a higher norm such as the School of Legal Solidarity expects.

Elevating the principle of solidarity to the status of a general principle of Argentine positive law would enable it to overcome existing contradictions between the norm and social reality, as well as between the law and fact. Likewise, it could endow the system with a transcendent idea in which it could collectively believe, giving society greater cohesion and union.

Solidarity is the reciprocal relationship between the whole and its parts. The awareness of oneself as a person comes about in the context of one's membership of a whole. A caring society is not merely one that lives together; on the contrary, such a society is one in which its members are united by the fact of their participation in the group.

Evolution from the principle of good faith to the principle of solidarity

Very often in recent history, Argentina has experienced extraordinary circumstances that shocked social life in such a way that they led to a belief that the law could not meet the demands of politics, the economy, nor, at present, people's health. Indeed, in times of crisis, traditional law gives way to emergency law, with specific characteristics designed for the crisis. Hence, each emergency creates its own system of rules. Crises raise crucial questions regarding solidarity. To answer some of those questions in the throes of a major crisis in Argentina, in 2001 a group of illustrious jurists from all over the world came up with a brilliant idea: that the creation of crisis law should result from the guiding values of conduct historically considered immovable. This group of jurists affirmed that there are general principles of law that under no circumstances admit restriction, and the creation of law for emergencies must arise from these principles. They concluded that the "principle of good faith" constitutes a general principle of law ruling over other principles. They likewise stated that the principle of good faith could not admit suspension under any circumstances.

They therefore took the principle of good faith as the starting point for the construction of emergency law. Their investigations were crystallized in an extraordinary work entitled *El Tratado de la Buena Fe en el Derecho* [Treatise of Good Faith in Law], edited by La Ley. The contributions of this book are fundamental.

One of the authors, Isidoro H. Goldenberg, analyses the relationship between legal appearance theory and the principle of good faith. Appearance theory states that a reliable and reasonable appearance protects the rights of people who enter a transaction. Good faith protects this right for the stability of transactions. This theory, Goldenberg affirms, is based on the Latin adage "communis error facit ius", which can be translated into English as "common error creates law." Appearance theory is helpful in extraordinary situations. It gives security to a current owner because, without the protection of appearance, that owner might be concerned about the difficulty of fully justifying the whole existence of a right. Appearance protection is helpful in facilitating transactions from the owner's point of view, since without it third parties would not dare enter into a legal relationship with the owner without raising obstacles to protect themselves against certain risks. Goldenberg argues that "appearance theory" in Argentine law arises from the principle of good faith. That is to say, good faith deserves legal protection, even if there may be errors. Thus, good faith has a preponderant role in legal creation due to its axiological support, and the predominance of moral rule as a general guideline of the legal system[24]. This principle applies in times of normality and should also apply in times of emergency.

Another author of the book, Marcos De Almeida Villaca Azevedo, holds that "objective good faith is a rule of conduct based on loyalty, fidelity, honesty, cooperation and respect that should guide all legal relationships." According to this principle, he adds, "people must act correctly; they must not unduly take advantage of any weakness, difficulty or ignorance of those with whom they are legally related"[25]. Thus it is a helpful reflection in times of regularity, but essential for creating emergency laws.

Guido Alpa, another of the book's authors, points to Stefano Rodotá's idea that good faith should be considered not only as a regulator in the negotiation, conclusion and interpretation of contracts, but should also be considered in their creation. It is fundamental in times of crisis and in the creation of rights. Alpa concludes that "the sacredness of the contract has eroded, and... in cases, the judge, under certain aspects, writes the contract for the parties"[26].

24. GOLDENBERG (2004) pp. 505-509.

25. DE ALMEIDA VILLACA AZEVEDO (2004) p. 134.

26. ALPA (2004) pp. 177-188.

The Chilean jurist Eugenio Llamas Pombo also contributed to the analysis of emergency law, pointing out that considering a contractual clause to be abusive – as a non-static concept – is justified by the principle of good faith: "That is, the close dependence that exists between the abusive nature of a clause and the object of a contract, as well as all the other concurrent circumstances in its execution, and all other clauses of the contract or related contracts"[27].

The work cited is an authentic treatise on good faith since it covers all branches of law: philosophical aspects, Constitutional Law, history, Roman Law, different areas of Civil and Commercial Law, Consumer Law, International Law, Environmental Law, Criminal Law, Labor Law, many aspects of foreign law and Procedural Law. Moreover, with more than 60 Argentine and 23 foreign authors, it shed light and marked the evolution of the principle of good faith as a general principle of Argentine law.

Evolution of the principle

More than fifteen years after that first *Tratado de la Buena fe en el Derecho*, the law in Argentina evolved, and "the general principle of good faith is now law through the rule contained in Article 9. of the Preliminary Title of the Civil and Commercial Code. Not only is this a symptom of the evolution achieved by the doctrinal production, but it is perhaps the most evident of its fruits"[28].

In 2019 professor Córdoba published his *Tratado de la Buena fe. Evolución del Principio* [Treatise of Good Faith in Law. Evolution of the principle]. This work recovers essential chapters of the original *Treatise*; it updates others and incorporates the recent work of authors such as: Giuseppe Conte, President of the Government of Italy; Stefano Troiano, Director of the Department of Law at the University of Verona; Néstor Cafferatta, Secretary of Environmental Trials of the Supreme Court of Justice of the Nation; Ubaldo Perfetti, professor at the University of Macerta; Carlo Granelli, professor at the University of Pavia; Francisco Magín Ferrer, professor at the National University of the Coast; Ursula Basset, Director of the Family Law Research Center of the Argentine Catholic University, etc.

Several authors considered the evolution of the principle towards the principle of legal solidarity. Conte argues that "legal science is going through a period of profound uncertainty and great fertility." He says that "the twilight of the old positivist paradigm has vanished. We are experiencing the dawn of a significant turning point as old certainties have been replaced by new glimmers, with no glimpse of a new all-encompassing paradigm, but rather a variety of new theoretical and methodological approaches, none of which, in any case, seem at this time to prevail over others."

27. LLAMAS POMBO (2004) p. 238.

28. CORDOBA (2019) p. XV.

He finds that the work of the jurist is extremely stimulating at this time because the hermeneutical role of principles, previously merely residual, is currently flourishing. He attributes this new situation of principles to two factors. The first is the current state of the regulatory system, which is more fragmented and incoherent than before. The second is the current state of society: the culture of our time reflects a more complex variety of values than in the past, and a multicultural society implies various ethical-political options and moral convictions that generate a wide range of axiological conflicts. In this context, the principle of good faith has evolved, in jurisprudential argumentation, in such a way that it is invoked together with that of solidarity, so that the two principles go hand in hand and reinforce one another. The President of the Government of Italy highlights that this new principle of good faith-solidarity is not the corporate principle typical of the fascist era, but is entirely in tune with the institutions of today's democratic states.

Conte warns, quoting Bobbio and Scarpelli, that the scientific nature of discourse does not consist in being truthful, that is, in the correspondence of the statement with objective reality, but in the rigor of its language. Therefore, research is of no scientific value without the use of rigorous language. In the case of the principle of good faith-solidarity, the use of principles in legal argumentation must also be subject to strict control by the principle of reasonableness. Likewise, Conte adds that it is necessary to tighten the control and verification circuit on the part of the interpreting community[29].

The principle of good faith-solidarity arises from a moral standard of society resulting from its social and legal evolution and its ways of life, customs, and knowledge. As a general principle of law, it is suitable for overcoming contradictions that arise in the emergency between social reality in crisis and the norm, between law and emergency. Likewise, it can endow the system with a transcendent idea to sustain a collective belief, providing society with greater cohesion and unity.

Néstor Cafferatta says much the same when he states, "Environmental law is a third and fourth generation human right whose founding values are peace, solidarity, and cooperation. When we say that good faith is central when referring to rights (individual or collective), it reinforces the basic idea of environmental law: peace, solidarity, respect for others, good faith, transparency, or environmental ethics (environmental morality) are fundamental for the effective protection of the environment"[30].

29. CONTE (2019).

30. CAFFERATTA (2019) p. 625.

From the principle of solidarity to a general theory of legal solidarity

Legal solidarity is neither a doctrinal creation nor the creation of legislators, as they are only the interpreters of social behavior. Yuval Noah Harari's reflections add up to this argument when he says that in emergencies, world leaders have to make two choices: the first between totalitarian control or the empowerment of society, and the second between isolationism or global solidarity. For him, the only possible alternative to the rule of law is the empowerment of society based on the ethical principle of solidarity[31]. Thirty percent of the world's constitutions already include the principle of solidarity, which is one of the fundamental principles of the European Union. Nevertheless, as expressed by Professor Alessio Zacaría, its articulation as a general theory of law is a consequence of the intellectual development promoted by the School of Legal Solidarity, made up of lawyers from Argentina, Italy, France, Spain, Uruguay, and Croatia.

The general theory of law based on the principle of solidarity finds its core in solidarity being a true guiding legal principle of all other general principles of law, because it is a notion that they all contain. The purpose of principles is to illuminate with values the content of legal norms. This theory also offers a legal system where solidarity is a necessary element of social cooperation. The processes of authority and obedience, and of cooperation and solidarity, are combined in this theory to transform the sovereign will of the legal system. Thus, the cooperative relationship is privileged over the principle of authority.

In this theory, the supremacy of the law is a distinctive seal of good government; it is not merely a "necessary evil", as it puts individuals in a situation where they may not abandon their judgment and responsibility. In a caring society, people who help each other improve themselves morally. To be supportive is to put oneself in the place of the other, to comply with the other, and to adopt the cause of another, making it one's own. Likewise, solidarity makes it possible to sustain and promote legal relationships in a horizontal sense.

Just as good faith is now an established legal principle in Argentina and is enforceable in everyday behavior, solidarity may also be an obligation that ensures personal and collective well-being in all aspects of social life.

In advocating solidarity, Guido Alpa acknowledges that it is an arduous road and warns against other, more accessible solutions. He also states that societies do well to worry about their evident divergences, but they must also remember that what unites us is greater than what separates us[32].

31. HARARI (2020).

32. ALPA (2005) p. 230.

Justification of legal solidarity

Justifying legal solidarity as a guiding principle of the other legal principles requires further explanation. Solidarity is a genre made up of two species: one is spontaneous solidarity, exercised without apparent cause; the other is legal solidarity, based on State authority. The latter is one which the beneficiary has the right to demand, a paradigmatic example being family solidarity. However, there are other examples, even in the international realm, where in some cases, the obligation to attend others is mandatory.

An example of this is Navigation Law, which regulates compulsory assistance to the crew of a threatened ship; when they receive distress signals, a ship's captain and crew must stand by the endangered ship without delay and assist those in need. It is also a matter of legal solidarity to assist the people in the wrecked ship.

Article 175 of the Argentine Aeronautical Code provides that aircraft operators and commanders are obliged, insofar as possible, to collaborate in the search for an aircraft at the request of the aeronautical authority. Article 176 states that an aircraft commander must: 1. Aid other aircraft in danger; 2. Rescue those persons on board an aircraft in danger. Article 224 establishes a penalty of imprisonment from 3 months to 1 year for not complying with these obligations.

Article 108 of the Argentine Penal Code typifies the crime of "abandonment," establishing that "Anyone who finds a minor under the age of ten lost or abandoned, or a person who is injured or disabled or threatened by any danger, and fails to provide the necessary assistance, when he can do so without personal risk, or does not immediately notify the authorities, will be punished with a fine of seven hundred and fifty to twelve thousand five hundred pesos."

Article 20 of Law 22.431 provides several obligations that require the removal of physical barriers in the urban, architectural, or transport areas to ensure accessibility for people with reduced mobility. Urban physical barriers are understood to be those found at pedestrian crossings, stairs, ramps, public spaces such as parks, parking lots, and works on public roads. Article 21 establishes the obligation on both public and private entities to limit architectural barriers in collective housing and buildings. Article 28 adds that the approval of work plans will depend on the inclusion of these standards. Article 22 establishes the obligations for public transport companies to reserve two front seats and free land transport to any destination for the disabled. It also establishes the obligation on transport stations and airports to have non-slip ramps, alternatives to stairs, and adapted toilets. Likewise, medical assistance is mandatory for all people in case of an emergency.

The standard of care established by Dr. Miguel Ángel Ciuro Caldani is compelling. He states: "everyone has the right to receive all the medical treatment available to another person"[33]. The principle of solidarity extends to the whole of social security law. The law defines *social security* as "the protection that society provides to its members, through a series of public measures against economic and social deprivation, which otherwise would cause the disappearance or a sharp reduction in income due to illness, maternity, work accidents or occupational disease, unemployment, disability, old age and death, and also, protection in the form of medical assistance and help to families with children." The entire insurance system is also founded on solidarity since it seeks to adequately accompany and cover the sometimes unavoidable risks of human development. Family Law is, without a doubt, an area where the solidarity principle is paramount.

The general principle of legal solidarity

We state a renewed vision of the entire legal system where caring for others may be the object of the first normative principle, based on the beauty of a society where human beings are responsible for the well-being of others, as in a family. It does not admit individualistic visions to the detriment of the collective interest. Thus, human dignity, the foundation of all rights, reaches its best expression. However, we also consider that the collective must tend to favor individuality. Solidarity should be enforceable, considering proportionality and order of precedence. Not everyone is equally responsible for others. Solidarity is a moral and social standard resulting from its social and legal evolution and ways of life, customs, and knowledge.

In conclusion, we argue that one side of the Law is rationality, and the other is aesthetics. We build on the idea of the first normative principle that gives rise to the structural rationality of the Law. We argue that the object of the first normative principle is an ongoing, caring way of life. From that thought, we infer that the rationality of such life springs from the beauty of human imperfection, being taken care of by responsible human beings. Thus, solidarity becomes a general principle of Law, linked to the best version of human dignity.

To close, we reproduce here one of the final paragraphs of Guido Alpa's masterpiece, *Soliedarietà*: "The principle of solidarity is an open work; it is the musical note of a symphony executed in various ways, played louder or softer. Solidarity is a constant source of law; constitutional, civil, and commercial. With his culture and civil commitment, competence, and perseverance, it is up to the practicing lawyer to express his full potential. It is an imperative legal concept. Furthermore, it is a precept

33. CIURO CALDANI (2013).

not confined to the ideal world nor entrusted to the hope of goodwill, but a part of the Western canon. None of us, let alone those of us who are lawyers, can escape it"[34].

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34. ALPA (2022) p. 176.

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