

Hyper-connected and spaced in a distressing era: some notes about *facultas agendi* in pandemic

Hiperconectado e espacializado em uma era de angústias: algumas considerações sobre a *facultas agendi* durante a pandemia

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Abstract

The purpose of this brief analysis is to identify the limits of web society in the period of the Pandemic in the light of the primary physiopsychic needs of freedom and privacy of people. Hence the focus is on the social cleavage generated between activities that can be carried out online and activities prevented by the pandemic. Furthermore, we try to frame: 1) the issue of hypothetical responsibilities for the contagion from the point of view of the legal system of Italy as the first massively infected western country; 2) the question of the reasonableness of State restrictions on freedom of movement.

Keywords: Bodily limits of the web society, Infodemic, Liability for pandemic, Freedom to move aimlessly, Social division, Digital empire

Resumo

O objetivo desta breve análise é identificar os limites da sociedade da web no período da pandemia à luz das necessidades psicofísicas primárias de liberdade e privacidade das personas. Daí o foco está na clivagem social entre as atividades que podem ser realizadas on line e outras atividades evitadas pela pandemia. Além disso, devemos enquadrar: 1) a questão das responsabilidades hipotéticas pelo contágio do ponto de vista do sistema jurídico da Itália como o primeiro país ocidental massivamente infectado; 2) a questão da razoabilidade das restrições estatais à liberdade de movimento.

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Palavras-chave: Limites corporais da sociedade da web; infodemia; responsabilidade por pandemias; liberdade para se mover sem rumo; divisão social; império digital.

Le fléau n'est pas à la mesure de l'Homme, on se dit donc que le fléau est irréel, c'est un mauvais rêve qui va passer. Mais il ne passe pas toujours et, de mauvais rêve en mauvais rêve, ce sont les hommes qui passent, et les humanistes en premier lieu, parce qu'ils n'ont pas pris leurs précautions (CAMUS, La peste, I, 1947)

Introduction: pandemic and bodily limits of web society

The Coronavirus pandemic² has established in the global village (McLuan-Flore, 1968) an antithesis between multimedia hyperconnection³ and interpersonal physical distance⁴: the network⁵ (Caldarelli-Catanzaro, 2016) has avoided the social pulverization induced by the distressing media communication⁶ of the all-encompassing and ubiquitous contagion and has allowed a global *societas ex distantibus* but has also demonstrated the irrenounceability of the physicality of human relationships of every type: from this point of view, the stress test to which the citizens of *Cosmopolis* (Zolo, 1995) have been subjected, has brought to the maximum logical tension the psychophysical sustainability of the web society⁷, which will always remain an instrument of real society and can never replace it in the creation of life, of its material and spiritual nourishment, individual and collective wealth (Bellizzi di San Lorenzo, 2018); hence the training of minors and young people is not reducible to storage of notions but it consists of vertical sociality between teacher and learners and of horizontal sociality between learners and between teachers (Cacciari, 2020) as well as participatory Democracy, and effective Justice cannot be definitively replaced by digital procedures: the dialectic between life on line and life 'on land' therefore finds its limit in a *Habeas corpus*⁸ that

² On 11 March 2020, the WHO modified the status of the infection with SARS -Cov 2 bringing it from epidemic to pandemic, see ACCADEMIA NAZIONALE DEI LINCEI -Commissione salute, 2020, p.3

³ On multimedia devices, see Mensi-Falletta, 2015, p.2. On the "multimedia labyrinth", see Castronovo, 2000, p. 340

⁴ "Social distancing is therefore the seal of the immune policy", see De Cesare, 2020, p. 33.

⁵ On the concept of "network", see Caldarelli, Catanzaro, 2012.

⁶ On anxiety communication, see Secord, Backman, 1964, p. 223.

⁷ In the sense that the network society is characterized by the interruption of rhythms, both biological and social, associated with the notion of life cycle, see Castels, 1996, p. 508.

⁸ See Matteucci, 1998, p. 87 on the contextual legal meaning of the Habeas corpus Act (1679) in Anglo-Saxon law, the value of which is updated in the Italian Constitution in art.13 of Constitution which places a double reserve of law and jurisdiction, to guarantee the inviolability of personal freedom: in the sense "that the reserve of law also excludes governmental acts with force of law", see Carlassare, 2011, p. 105. On "body" and "habeas corpus" in the personalist conception", see Veronesi, 2007, p. 10 and ss.; on the concept of "Habeas corpus" towards computer power in oppositive (right to privacy) and pretentious (right to identity)", see Bellizzi di San Lorenzo, 2019, § 7.

rises, in all its etymological semantic physicality, in the face of any neopotestative involution of a universal digital *imperium*⁹ that naively assumes that it can disembowel the subject¹⁰ after the community uprooting of a *Globalisierung* in crisis (Beck, 1997).

Pandemic human divide and its consequences

During the pandemic, the social "human divide" manifested itself split between those who can afford to work from home behind the screen of a computer and those who cannot afford it because they do material work. But if the category in smart working is worn out by a growing physical and mental wear, aggravated also by the cohabitation with other family members operating on line in more or less restricted and bearable spaces of shared cohabitation (Cacciari, 2020), those who carry out material work are divided between those who have continued to work in the food supply chain, in health, in the police force, etc. and those whose lockdown has suspended indefinitely the activity of production and trade in goods and services of all kinds (steel, motor vehicles, textile, construction etc., not to mention tourism, catering, socialization etc.)

But this horizontal line, which separates the apparent Eden of on line work from the *Lagrimarum valle* of reality 'on land', intersects with the vertical line, which separates those who have a public or private fixed income including both those who operate on line (teachers, magistrates, etc.), and those who work 'on land' (police etc.) by those (even on line, such as tourism agents or 'on land', such as traders of non-core goods), whose profitable activity was blocked directly by the pandemic or by the consequential *factum principis*¹¹ and which, however, after each reopening otherwise mortgaged by the uncertainty of a possible new closure, meet the impossibility to reactivate: 1) due to their own economic inefficiency caused by the blockage ("storage" for goods not withdrawn); 2) by a drastic contraction in the demand for goods and services resulting from the internationality of the pandemic crisis involving a sudden reduction in the movement of persons and goods; 3) for health regulatory limitations to spatial/modal reception of physical places of supply of goods and services, which result in additional costs for the various exercises, which are either discharged to consumers or feedback as the contributing cause of closure of activity at subsequent burst. And closure of business means increasing redundancies of workers and restitution of real estate to owners burdened anyway by taxation on property in a recessionary spiral of economic entropy.

The intersection of these lines, horizontal and vertical, identify a real social cross, which shatters the certainties of acquired well-being of the contradictory genteel mass society (Ricolfi, 2019), in a four-part society, with psycho-economic sufferings online and 'on land'.

⁹Observe sharply Mannoni, 2016, p. 50: "We must not forget the origins of the internet. Born under the auspices of the U.S. military administration, the internet has never lost the signs of this stigmata"; see Morozov, 2012, p. 50. On the absence of sovereignty, the intrusiveness of new powers in cyberspace, see Rodotà, 2012, p. 378; on "right to algorithmic nondiscrimination", see Simoncini, 2019; Gatti, 2019, p. 711.

¹⁰ For the reference to the individualism of disembodied rationality, inaugurated by Descartes, see Taylor, 2006, p. 31; for the contrast between real and legal ego, see Mazzamuto, 2018, p. 847.

¹¹ On the impossibility of performance and other problems of private law, see Scognamiglio, 2020.

But the inevitable contrast between those who *certant de damno vitando* (bankrupt entrepreneurs, redundant workers, subproletarized professionals, etc.) and those who *certant de lucro captando* (multinational on line commerce¹², pharmaceutical companies, predatory speculators, real estate, digital and financial companies) lays down the conditions for social tensions, which are destined to flow 'on land', within the territorial framework of the States, combining with the socio-endemic contradictions of each context, putting to the test the social system and enforcement rules in relation to the consequential crisis of public order in the sense of *ordre dans la rue* (Becker, 1968, 76, 2).

In fact, it acts as a gloomy background, to this social cross, a “gehenna” of people invisible to the eyes of analytical approaches with a subset of “culture of waste”¹³: underemployed, unemployed, non-integrated immigrants, homeless etc. swell a heterogeneous “damned mass” – It is not known how much surveyed even from an epidemiological point of view – whose rising tide risks snatching the lucky people from safe shares on land and on line and letting them be swallowed by the waves of pandemic storm.

Anthropological postmodernity and pandemic

But what is the existential *Kultur broken* of the pandemic, for the historical moment in which it falls? Masses of people have realized *in corpore vivo*, through the anguish generated by the submicroscopic invisible and ubiquitous enemy, their anthropological condition of post-modernity already forewarned and, by intellectuals of the late twentieth century (Lyotard, 1979): the future is no longer perceived as a harbinger by definition of growing well-being and increasingly widespread as for modern post-Enlightenment man of the “magnifiche sorti e progressive” (Leopardi, 1845).

The planetary pandemic of the digital age has definitively unveiled the stage illusion of an anthropocentric distinction between History and Nature, so much so that the concept of divine punishment, at the same time as it is banished from the contemporary orthodoxy of Religions (Pellegrino, 2020; Neuhaus, 2020), it bursts under immanentistic deceptions of the reaction of a deified Nature wounded by Progress, in the narratives inspired by ecology and the happy degrowth (Capua, 2020).

Suddenly, the generation of western millennials and assimilated, digital natives¹⁴ – existential avant-garde of a humanity accustomed to constantly interchange virtual reality and physical reality – looking forward twenties without having known wars other than in fiction, in the playstations, in the history books or in the news as well as their parents at least troubled by September 11, 2001 and related war-related events – was faced with the block of interchangeability between physical reality and virtual reality, in the sense that the possible place has returned to be only the place of residence without alibi of claustrophobia. This to keep silent about the terrifying impact on western masses of seniors: the infodemia inherent

¹² On the enhancement of the “physical store” in the advancing dominance of online commerce, see Kotler, Stigliano, 2018.

¹³ For the frequent reference of Pope Francesco to this concept, see Cappelli, 2020

¹⁴ On this specific contemporary existential condition, see Siegel, 2011

to a submicroscopic entity, such as a virus (no matter if of natural or artificial origin) disarticulated each individual and social security and returned man to ancestral subjection to Nature.

And ultimately, the conspiracy hypothesis (Di Cesare, 2020, p. 33) evoking the ancient theme of the *pestis manufacta* (Manzoni, 1842) or the possible scenario of bacteriological or virological war/ terrorism or the leak from a laboratory (Punzi, 2020; Fuggetta, 2020), pointing the way to one or more culprits for malicious intent or wicked guilt, would provide an alibi for the strongest sense of powerlessness of knowledge derived from an indomitable nature stepmother (Leopardi, 1827).

Approach to the problem of responsibilities and its criticalities

Certainly, if the virus is derived from an interspecific leap from animal to man, that is zoonosis¹⁴, the question arises of the international relevance of the immeasurable damages derived from hygienic-food practices of the place of hypothetical origin¹⁵ in an integrated global economy, characterized by outsourcing and delocalization of production cycles¹⁶.

Consequently, we cannot exclude a responsibility of the territorial State (Conforti, 1987, p. 347) or of any international organization for having omitted the precautions in preventing: 1) the onset of harmful source; 2) the spread of damages through timely information of the international community (Simonetta, 2020).

But we must also be aware that this consideration can be neutralized by the fact that we live in post-age that removes the duration of time, its decantation, its cyclical rhythms as well as its sense of direction and responsibility: the present, broken down into infinite information fragments and recomposed into fleeting media myths, engulfs the privacy of people and the responsibility of those who are able to produce macro phenomena.

However, taking into consideration the case of the first massively infected western country¹⁷, the Italian legal system¹⁸ provides for the crime of an Epidemic¹⁹ spread intentionally (article 438 of penal code) or negligently (article 452). Thus, fellows from the indictments for this crime, the legitimacy of the relatives of the dead²⁰ to seek compensation from those responsables (article 185 of penal code-article 2059 of civil code).

In consideration of the developments in science that currently makes it possible to spread germs and viruses capable of causing epidemics, the provident legislator of 1931, indicted the

¹⁴ On the zoonosis hypothesis, see Accademia Nazionale dei Lincei, Commissione salute, 2020, p. 3; Romano, 2020.

¹⁵ In the sense that the Black Death of 1347 "vient de Chine (de la province de Hubey, la même d'où est partie l'épidémie de Covid-19)", Vignaud, 2020.

¹⁶ With the dismemberment of production, the nationality of a product has lost much of its meaning: see Bellizzi, 2005, p.62 ff; Hidalgo, 2015, p. 135; Fontagne, Lorenzi, 2005.

¹⁷ In this sense, see *Lectio magistralis* of Italian past Prime minister Conte, Florence University, 26 February 2021.

¹⁸ On the tragic effects of the pandemic on the Italian territory, see Tedeschi, 2020.

¹⁹ On the crime of epidemics, see Erra, 1966, p. 46; Manzini, 1987, p.393; Ardizzone, 1990, IV, p. 250; Riondato, 2008, p. 1097; Antolisei, 2008, p. 538; Gargani, IX,2, Milano 2013, p. 208.

²⁰ On the subject of the legitimacy of relatives for death damages, see Bellizzi di San Lorenzo, 2019, p. 90 and bibliography cited here; Mantelero, 2013.

willful or negligent conduct of “anyone who causes an epidemic through the spread of pathogenic germs”²¹ (article 438 of penal code).

In the medical concept of epidemic it is the collective manifestation of disease (cholera, flu, etc.) that rapidly spreads to affect a large number of people in a more or less vast territory depending of various factors and develops, with a variable course extinguishing itself with a variable duration²².

However Italian law made a choice of criminal policy that limits the relevance of the event to the specific epidemic spread through pathogenic germs²³ (Antolisei, 2008) – that are microorganisms such as bacilli, protozoa and viruses – and not to any epidemic that develops through toxic radioactive agents (Manzini, 1987, p. 396; Gargani, 2013, p. 216; Carpinato, 2020). Therefore, since it is an offense by bound²⁴ means but not by bound conduct²⁵, it can be committed both actively and omittingly²⁶(article 40 of penal code).

So, from the point of view of the omissive responsibilities of competent Authorities (Imariso, 2020), the problem arises from the fact of not having blocked direct and indirect flights from China and from the fact of not having implemented the only effective measure to avoid this event that would have been the identification of all passengers from China and their quarantine required²⁷. In fact, in the network science literature it was already known that the super diffusers of epidemics are probably the hubs of social networks, in which the nodes are not represented by people but by places such airports (Caldarelli, Catanzaro, 2012, p. 125 ff)

Nevertheless, the commonsense consideration of the objective global fact for which the world health organization declared the Pandemic on 11 march 2020(Carpinato,2020) is imperative in every judgment of responsibility: so, in the reasonable assessment of the casual

²¹ See Antolisei (2008, p. 538 ff.) which paraphrases the comment of the Keeper of the Seals A. Rocco to the Ministerial Report on the Works of the Criminal Code and the Criminal Procedure Code of 1929.

²² See De Blasi,1948 (updated on 2017), XIV, p. 60; Gargani (2013, p.211 ff.) looks carefully “l'evento di pericolo comune...in relazione all'epidemia,esso si specifica e si concretizza nella capacità diffusiva del contagio ossia nella facile diffondibilità *in incertis ac plurimas personas* della malattia infettiva”. For Cassazione civile Sez.Un,11 gennaio 2008 n°576, www.altalex.com to configure the crime of an epidemic, the convergence of three characteristics is required: 1) uncontrollable diffusivity in a significant number of subjects (so excluding HBV, HCV, HIV); 2) absence of human factor attributable to the transfer from subject to subject (so excluding haem transfusion);3) the chronologically limited duratio of the contagious spread (otherwise the ENDEMICIA is realized. Furthermore non-communicable animal epidemic to humans including plant diseases also remain outside the crime of epidemics, to be provide in the article 500 of penal code.

²³ Pure animal epidemics, non-transmissible to humans, falling together with plant diseases in the case of article 500 of the Criminal Code remain outside the spectrum of the crime of epidemic.

²⁴ In favor of the omissive configurability of the caused Epidemic also Erra (1966, p. 46 ff.), Riondato (2008, p. 1097 ff.). Very clear Corte di Cassazione, Pen.Sez.I, 30 ottobre 2019 n°48014,www.altalex.com: “la norma incriminatrice non seleziona condotte diffusive rilevanti e richiede, con espressione quanto mai ampia, che il soggetto agente procuri un'epidemia mediante la diffusione di germi patogeni, senza individuare in che modo debba avvenire questa diffusione, occorre,però al contempo- e ciò è evidente -che sia una diffusione capace di causare un'epidemia”.

²⁵ Cassazione. pen. Sez. IV,12 dicembre 2017 n°9133, in [archivio dpc.diritto penale.org](http://archivio.dpc.diritto.penale.org), a case of gastroenteritis infection due to contamination of the public water of a municipality, otherwise the crimes of water poisoning art.439 co.1 and adulteration of food substances ex art.440 co.I and opting in concrete for the latter case. Moreover, in the sense of possible concurrence of omissions in the crime involving restricted conduct, Cass.Sez.I ,23 settembre 2013 n°43273 , in www.mgiudiziario.it; Cass.,Sez.VI, 8 aprile 2016 n°28301, in *Codice penale commentato* edited by Alibrandi.

²⁶ Article 40 cpv. cod.pen.: “Non impedire un evento che si ha l'obbligo giuridico d'impedire equivale a cagionarlo”; very clear, in this sense, Cassazione.pen.Sez.I, 3 ottobre 2019 n°48014 .

²⁷ In this sense ,the internationally renowned immunologist , emeritus professor of the University of Florence, Romagnani, 2020, pp.1 e 5: “l'Italia ha bloccato i voli diretti dalla Cina , ma individui infettati dal virus sono potuti arrivare attraverso un doppio scalo facendo scalo in un'altra città europea o del Medio oriente e non sono stati individuati all'aeroporto italiano di arrivo(...)Così alcuni individui infettati sono passati attraverso le maglie larghe del sistema di controllo e qualcuno ha dato inizio alla catena di contagi in Nord Italia. L'unica misura efficace per evitare questo evento sarebbe stata l'individuazione di tutti i passeggeri provenienti dalla Cina e loro quarantena obbligatoria”.

link between omissive conduct and event, it is necessary to verify the uselessness of the correct alternative behavior (Mantovani, 2017, p. 140) in relation to the global context.

Biopolitics, death anxiety and social asphyxia: reasonableness of the limitation of freedom, psychopolitics and privacy

In the uncertainty of the outcomes of this Pandemic (Zakaria, 2020) comforted by the hopes placed in vaccines²⁸ and for future references for the case of a recurrence of similar phenomena or future temptations to abuse states of exception²⁹, we must reflect on the limitation of freedom³⁰ established by biopolitics – overflowing into the psychopolitics (Esposito, 2004; Han, 2014) – that assumes to limit it for the benefit of collective and individual health: the fear of death, is the fear *par excellence* (De Marchi, 2014) that on a conscious level is always present in the human being who tries to neutralize it with religious rituals (Otto, 1917) or to remove it with ordinary daily activities of sustenance or leisure (Corbin, 1995) but also with apparently not functional behaviors such as a walk without a destination or an unnecessary purchase (Careri; 2006; Franchi, 2007).

But when the fear of death does not have a sensually identifiable and determined cause, but it is ubiquitous and indeterminate, the fear becomes anguish (Galimberti, 2001). Hence, if this anguish becomes collective and it is fed strengthened and institutionalized by the mass media's enveloping system and, at the same time, the State prevents not functional and not dangerous behaviors as indeed a solitary walk³¹, a physio-psychic short circuit is produced for individuals as well as psycho-social trauma (Di Cesare, 2020) with distorting economic, social and political effects directly proportional to the duration of the unreasonable and disproportionate limitation: the freedom of movement of the person is not only the possibility to move to reach one more destinations starting from a given place (one's residence etc.) but it is the possibility to move even without a destination: leaving the house without knowing where to go even before choosing a destination and being able to change it

²⁸ On the problem of the constitutional legitimacy of the vaccination obligation, see Cerrina, Feroni, 2020.

²⁹ "(...) men mostly put the strongest banks to open tyranny but do not see an imperceptible insect that gnaws at them and opens a much safer the more hidden way to the river that floods." Beccaria, 1764, p. 88. For a comment see Siciliano, 2015, p. 929.

³⁰ For the concept of *Ausnahmezustand* on Schmitt, see Miglio, Schiera, 1972. In the sense that, in the Italian law system "La nostra Costituzione non contempla un diritto speciale per l'emergenza", see Cartabia, 2020; in the sense that "il diritto alla vita e il diritto alla salute, beni che oltre a vantare il carattere fondamentale costituiscono essi stessi il presupposto per il godimento di ogni altro diritto", see Conte.

³¹ "D'altro canto mai potrebbe, dall'autorità pubblica essere invocati l'art.32 Cost.per derogare, per motivi di salute alla portata e alle garanzie dell'art.13", see Mortati, 1962, p. 851: for the Italian Constitution (article 16), only the law can establish limits on the freedom of movement for reason of health and safety. Hence the administrative decrees of the President of Council of Minister from 9 March 2020 are implementing the law 24 February 1992 number 225, establishing national civil protection: these decrees had to make possible to do physical activity in the vicinity of one's home and outdoor activities individually. But see Gualtieri, 2020. Of <<precedente inquietante>> and of << una mortificazione delle categorie costituzionali fondanti-forma di governo, libertà fondamentali >> talks Cerrina Feroni, 2020. Then, d.P.C.M. on November 3, 2020—even in areas of the national territory characterized by a scenario of maximum severity and a high risk level (red zone)— has rightly distinguished between: "it is allowed to carry out motor activities individually in the vicinity of one's home..." and "it is also permitted to carry out sporting activities exclusively outdoors and individually" (article 3, § IV, letter e) without prejudice to the curfew throughout the national territory from h.22 to h.5.: this provision has been reiterated by the decree of President Draghi on 2 March 2021: indeed in the Italian law system a general and absolute prohibition of moving outside one's home is illegitimate because the obligation to stay at home is a restrictive measure of personal freedom that can only be individual and issued by a judge on the basis of conditions identified strictly by the Law and in compliance with the right of defense (Tribunal of Reggio Emilia 21.01.2021, www.ambientedito.it).

once you have chosen it, is the essence of freedom of movement as a dynamic manifestation of the right to privacy and therefore of the actual moral integrity of the person in public as well as private space (Warren; Brandeis, 1890).

The propulsive essence of human freedom of movement is not- functional and, only for this reason, potentially³²programmatically and this is accompanied by the awareness that the human being is a symbolic animal and not just a rational one (Cassirer, 1994).

If the State selects the goals of possible direction of movement as the only legitimacy to leave one's primary shelter and this is unreasonable (Cheli, 2011) with respect to the aim of preventing contagion, it does not limit freedom of movement but it eliminates the real presupposition of true not-functional and totipotent freedom: in this way the State eliminates the sense of freedom of the unitary subject, whose identity is shattered in the function of the possible movement (Galimberti, 2008, p. 547) chosen in a heteronomous and general way (sectoral aspects of health, nourishment) in a static panopticism that concludes the perception of space and time.

But if it is free only what is expressly permitted to carry out the functions typified by the rules, then the implementing behaviors of those functions are not free but functional, because the psychic essence of freedom of movement, as such, is suppressed. Thus the crisis of "the age of rights" (Bobbio, 1992) is contextual to an instrumental neo-totalitarianism that is directly proportional to the pervasiveness of the digital tool in people's lives (Han, 2016) so as to change them in a heteronomous and unnecessary way: an open society (Popper, 1946) cannot confine the individual in a domestic jungle of connecting terminals that neutralize the possibility of exercising the *droit à la déconnexion*, as a manifestation of the right to privacy³³, not only in the sense of the "right to be let alone" but in the sense of the right to real sociality as an inalienable alternative to the web society (Bellizzi di San Lorenzo, 2019, § 4).

Conclusions

Therefore, in the succession of early indiscriminate reopenings to late indiscriminate closures – in the dialectic between lockdown, unlocking and new lockdown – the uncertainty of the pandemic epilogue is generated in the social body, fomented by the continuous contradictory news of the best unspecified category of sectoral experts (Nichols, 2017) chosen by media subjects, divided by "apocalyptic and integrated" (Eco, 1964), in a mythological scenario (Grossi, 2001).

Hence this brief analysis cannot exempt itself from the awareness that politics is called by ordinary and extraordinary events to be the *scientia scientiarum* that concretely assumes the responsibility for decision making synthesis, just in scientific doubt³⁴ and in the certainty that

³² Icastic is the expression "il diritto soggettivo se non fosse altro che la *facultas agendi*, rappresenterebbe un puro vuoto nel pieno del diritto", Cesarini-Sforza, 1947, p. 205.

³³ For legislative provision of the *Droit à la déconnexion*, in the French system, see article L.2242 of *Code du travail* (L.21 juillet 2016)

³⁴ For the principle of precaution (Pr. Declaration of Rio de Janeiro 1992-article 191 of Ue Treaty): "in order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as reason for postponing cost-effective

there cannot be 'zero risk' for no human action (Montinaro, 2012): so there can be no economic enterprise if social distancing becomes chronic in social distrust, the opposite of social trust that sustains private economic initiative, oppressed by a preceptistic and bureaucratic digitized forest, that is unreasonable and socially suffocating as much as the virus that deprives of the breath its innocent victims.

Just as this brief reflection on the course of a macrophenomenon – that has not yet been exhausted – cannot exempt itself from collecting the widespread hope that the tragic epilogue of the Minneapolis citizen³⁵ who said “I can't breathe”, will follow, for the Cosmopolis citizen, the possibility of saying, with Tacitus *nunc redit animus*³⁶. The dialectic between “I can't breathe” and “now the breath returns” dramatically captures the spirit of the time, in which breath and freedom coincide³⁷.

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measures to prevent environmental degradation”. Hence, since the right to health, the precautionary principle places an obligation, on the competent authorities, to prevent the spread of epidemics on the national territory.

³⁵ We refer to the symbolic and mass media relevance of the killing of the US citizen George Floyd during a local police act in Minnesota, on May 25, 2020, see [wikipedia.org](https://en.wikipedia.org/wiki/George_Floyd)

³⁶ See *Agricola*, 3-4

³⁷ Extraordinary topical, in this sense, is the fragment of the famous *Discorso sulla Costituzione agli studenti milanesi*, on 26 January 1965 of Calamandrei: << La libertà è come l'aria: ci si accorge di quanto vale quando comincia a mancare >>, see [Youtube.it](https://www.youtube.com/watch?v=...)

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