

The Mediterraneans: Opposite Views

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The current migration policy of the Mediterranean area has for years experienced an unsustainable situation, which has made the Mediterranean Sea a sea of bodies of those who have fled their countries in an attempt to reach the other shore. This migration policy sees immigration in times of crisis as a threat to public order and security and demands the institutionalisation of instruments of exception such as internment camps or the use of armed forces and the criminalisation of immigrants. The objective of this policy based on fear is for us to give up our rights and liberties and violates the most basic right of human beings: the right to asylum.

An Interplay of Views that Reveals our Way of Seeing

I consider that a visit to this exhibition at the IVAM is primarily an exploration of different ways of seeing. There is no need to echo Anderson's insistence on the process of the social construction of reality that we perform with our way of seeing, which the great Machado summed up in the well-known lines "*El ojo que ves no es / ojo porque tú lo veas; / es ojo porque te ve*" (The eye you see is not / an eye because you see it; / it is an eye because it sees you). Films and photography, even more than painting, have that brutal capacity of reconstruction.

I know that art does not have to set itself any kind of normative intention. I am using normative in the Kantian sense of practical reason, the reason that has to do with the meaning, evaluation and justification of our decisions and our conduct, and that aspires to guide our decisions in the moral, judicial and political order. Therefore, I say again that in

art that normative intention is not a necessity, and still less a priority. And even less necessary is the perversion that Nietzsche denounced as moralistic acid. It is our way of seeing, that of the visitor to this exhibition, that will be able and perhaps will want to extract a judgement that sometimes will go further than what the artist proposes and sometimes will go less far. A judgement that, in my view, will allow us to reveal the brutality and cruelty of our (re)creation of the Mediterranean, of our Mediterraneans. Because, for a start, we cannot ignore the fact that the Mediterranean is the largest border or boundary in the world, in the sense of the largest demographic fault: there is a gigantic inverse proportion between GNP and demographic growth on either side of our sea. That cannot fail to produce an effect of exodus from those countries (where the population of persons under 21 years of age is an overwhelming proportion, added to the fact of the scanty or very meagre expectations of improvement in quality of life) towards

the countries in the north, which have grown old but have a GNP and human development index up to five times greater than those of the countries on the southern shore. What we could not have suspected is that our maritime boundary would also become the most perilous one in the world.¹

That is the Mediterranean, the Mediterranean that we have created with interests and laws. Those that serve what we call “Mediterranean policies”, such as the policies of migration and asylum. Interests, laws and conflicts that barely manage to conceal the reasons why the Mediterranean is becoming – or, worse, by which we have made the Mediterranean become – a place of fright, of indifference to the fate of the Other: the fate that we have assigned to him by constructing him with our way of seeing, which assigns to him exploitation, inequality, humiliation and death.

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I say death. Death that is not only physical, that of the almost four thousand corpses that in 2015 enlarged the mass grave that the sea to which our ancestors referred with the possessive, *our* sea, has become. No: I am speaking of inequality, exploitation, humiliation and

expulsion, which are civilian death, the death of what is most human, the deaths of people transformed into anonymous numbers, statistical fodder.

Yet the Mediterranean is also, or at least it was, the myth in which the myths from which we still draw nourishment grew. The myth in which myths became reason, *logos*. In what follows I shall try to offer the reader, or the visitor, some clues concerning this deviation.

Mediterranean: Myth, Reason, Market, Empire

Since the eminent philologist Wilhelm Nestle published his monumental work *Vom Mythos zum Logos*,² in which, in a critical dialogue with the *physicists*, the Eleatics and sophists and Plato, but also with Nietzsche, he explains the birth of philosophy in Greece as an effort of emancipation of reason from mythological thinking, the work of those first philosophers, we cannot separate that trilogy – myth, reason, philosophy – from another key concept, that of the Mediterranean.

Indeed, the Mediterranean appears as the natural space, the “amniotic broth” of civilisation or, at least, of the cultural tradition that has been appropriated in terms of the identity of Western civilisation, our civilisation, and it has gone so far as to define itself as “the” civilisation. It is a “sea between lands” that involves a constitutive dialectical relationship

1. This is proved by the report published in September 2014 by the International Organization for Migration (OIM), *Fatal Journeys. Tracking Lives Lost during Migration*. It can be downloaded from their website at http://publications.iom.int/system/files/pdf/fataljourneys_countingtheuncounted.pdf. In June 2015, the Brussels-based Migration Policy Institute (MPI) published its report *Before the Boat. Understanding the Migrant Journey*. See <http://www.migrationpolicy.org/research/boat-understanding-migrant-journey>. That report, in turn, is part of the research project “EU Asylum: Towards 2020” being developed by the MPI and the Open Society Foundation in the framework of the Europe and International Migration Initiative, a project that is trying to further the work done in 2014 in the framework of the initiative “European Asylum Beyond 2014” and that is oriented towards the development of the Common European Asylum System (CEAS).

2. KRÖNER, A., *Vom Mythos zum Logos, die Selbstentfaltung des griechischen Denkens von Homer bis auf die Sophistik und Sokrates*, 1940.



Mohamed Bourouissa, *Le miroir* (Périphéries series), Musée de l'Histoire et de l'Immigration, Paris.

between three lands (Europe, Africa, Orient) which historically was resolved in the same relationship between two civilisations, Orient and Occident, two world views that really implied each other while at the same time conflicting with each other: they nourished each other, as did the Holy Roman Empire and the Ottoman Empire, that of the Holy Door, although they finally resolved their age-old conflict – political, commercial, religious and cultural – with the hegemony of the latter, which eventually imposed its own version of the Orient, the Orientalism so expertly described by Edward Said.³

It was the Roman tradition that took this region where culture originated to its culmination, joining to it the dimensions of a commercial area, one of exchange, and therefore of wealth, the key to the prosperity of the Empire and even of the very notion of empire. The Romans were, admittedly, not the first to accumulate those two dimensions, economic and political, which the Mediterranean potentially contained. The names of Carthage, Alexandria, Athens, Sicily, Crete, Tyre and Byblos, i.e., above all, of the Phoenician-Punic civilisation or of the empire of Alexander III of Macedon, Μέγας Αλέξανδρος, the disciple of Aristotle and son of King Philip, are antecedents that help to explain the myth of the Mediterranean as the central sea and even as the centre of the world, as long as we do not forget the tendency that makes any empire, as such, define itself as the “empire of the centre”.⁴

The curious thing is the evolution of this central defining role of the myth of the Mediterranean for the identity of Europe itself, i.e., the relation between the cultural, economic

and political role of the Mediterranean and the mission that Europe has always attributed to itself. Above all because it would not be going too far to propose that, historically, the self-comprehension of Europe cannot be understood without reference to the different view attributed to the Mediterranean. In this regard, it is impossible to forget the contribution of the Annales School and particularly of the great Fernand Braudel.⁵

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It is true that the global dimension that was acquired by Europe – the European powers – from the late fifteenth century onwards and that extended until the first half of the twentieth century is connected with the decline of the Mediterranean as a vital sea (Spain, Italy and, to a lesser extent, France), in conflict with the *Atlantic* powers (first Portugal, then the United Kingdom and the Netherlands), which established the centrality of the Atlantic and of the nations of the north,⁶ which, with the exception of the United Kingdom, very early on present as an aspirant to the hegemony, were primarily those of *Mitteleuropa* and only later the nations of the north, those of the North Sea and the Scandinavians around the Baltic.

There is no need to emphasise that the decline of the Mediterranean as the centre

3. I am referring to his magnum opus *Orientalism*, published in 1978, although a reading of *Culture and Imperialism* (1993) is also recommended.

4. As China did, defining itself as such, *zhong-guo*, state or nation of the centre.

5. *La Méditerranée et le Monde Méditerranéen à l'époque de Philippe II*, Armand Colin, 1949.

6. It is impossible not to mention here Luis Racionero and his *Mediterráneo y los bárbaros del Norte*, Barcelona, Plaza Janés, 1996.



Adrian Paci, Back Home (Kaufmann Repetto Gallery, Milan).

of the lands and the centre of Europe and even of the world has a great deal to do with other myths, such as the one that the Swedish cartographer Olaus Magnus helped to create in the sixteenth century, which established the difference between Mediterranean and Nordic people: the former were soft and degenerate because of the warm climate (but also full of life), while Nordic people were healthy and virtuous because of the rigours of their envi-

ronment. This characterisation on the basis of geographical circumstances (something that, of course, appears in Montesquieu) received decisive support as a result of the vulgarisation of Weber's thesis about the Protestant ethic and capitalism, which described the superiority of the ethos of the peoples of the Reformation compared with Mediterranean people (Catholics, or, worse still, Muslims – not Europeans, strictly speaking). That is

what underlies the acronym PIGS, with which the jargon of Brussels tries to stigmatise the Mediterranean partners of the EU. Thus the sun, light and salt of the Mediterranean, its landscape, its agriculture and its rhythm of life have become an area of leisure in the worst sense of the term, the mass tourism that is converting the Mediterranean countries and the sea itself into a service area, a holiday destination for the masters of Europe.

We must consider in more detail the notion of the border, which is fraught with ambiguity, even if it seems to correspond to a natural barrier. Because the dominant notion of a border is a reduction that does not do justice to the historical role of this sea

However, a further turn of the screw was yet to come, a turn of history that, coming on top of the techno-economic process of globalisation imposed by fundamentalist market ideology (as Stiglitz called it) and of the logic of expulsion that, according to Saskia Sassen,⁷ is the emblem of this phase of global neocapitalism, is an economic model that, like that of the start of capitalism itself, has its consequences, its costs. At the start there was colonialism, imperialism and slavery. Now there is the exponential increase in inequality, the pauperisation of the peoples of the South and the destruction of their natural habitats (and of the world itself), which obliges them to move, to flee, and which is at the origin of the phenomena of forced human mobility that we call migrations or shifts and that characterise the new pariahs, the immigrants and refugees. As Sassen explains, they are socioeconomic dislocations that cannot be explained only in terms of the categories of “poverty”

and “injustice”. According to that recipient of the Prince of Asturias Award for social science, these dislocations would be understood more accurately if they were conceptualised as a variety of manifestations of what we should consider as expulsions. And so she writes, “The past two decades have seen a sharp growth in the number of people, enterprises, and places expelled from the core economic and social orders of our time.” Expulsions that are not spontaneous but produced with instruments that “range from elementary policies to complex institutions, systems, and techniques that require specialized knowledge and intricate organizational formats.” The analysis of the logic of expulsions reveals a system whose consequences are devastating, even for those who think that they are not vulnerable. From finances to mining, the predatory techniques of expulsion lay hold of all those whom contemporary sociology has led us to understand as disposable, replaceable, the new pariahs whose archetypes are the immigrants and now also the refugees. The ones crossing the Mediterranean, risking their lives for the hope of the other shore, our shore. And that is how the Mediterranean, which was a border area, became a boundary of death, a place of fright.

The Mediterranean and the Polysemy of a Border

It is true that the Mediterranean has also, and especially, been a border or boundary between three continents, between different cultural and religious traditions, between empires in conflict, as I recalled earlier. However, we must consider in more detail the notion of the border, which is fraught with ambiguity, even if, as in this case, it seems to correspond to a

7. SASSEN, S., *Expulsions*, Belknap, 2014.

natural barrier. Because the dominant notion of a border is a reduction that does not do justice to the historical role of this sea.

But what is a border nowadays? In what sense is the Mediterranean a border?⁸

However, it is worth recalling that the context of globalisation imposes a recognition of the porosity of borders and the failure of all attempts to close borders like a fortress

I think that the outstanding American political scientist and feminist Wendy Brown has given a very good explanation of the contradictions that are produced by the process of globalisation, which we ingenuously identified with the progressive *detritorialisation* of the world.⁹ We thought that, sooner or later, the logic of the process would lead to the downfall (the abolition) of borders, at least of borders understood as instruments of affirmation of territorial sovereignty in relation to those who dispute it (i.e., other states or else invading “hordes”). A disappearance of the border understood as a fortified geographical limit against the external enemy, which Buzati criticised in his novel *The Tartar Steppe*, as also did Cavafy – in his poem “Waiting for the Barbarians” – and Coetzee – in his similarly titled novel. But the immediate reality shows us not only that they are not disappearing (even if what they have is a symbolic function, which, in any case, maintains the repressive, violent element of which I shall speak later) but that they are increasing. All that was wanting was

the reinforcement of walls and fences that we witnessed in 2015 in many parts of the EU, from Poland and Hungary to France and Spain, which seems like a rediscovery of the myth of fortress Europe.¹⁰

However, it is worth recalling that the context of globalisation imposes a recognition of the porosity of borders and the failure of all attempts to close borders like a fortress, an attempt that the EU tries to revive from time to time, based on a short-sighted economic view (concentrated on obtaining a reserve army, no less) which violates the elementary requirements of a rule-of-law state with regard to immigrants, and, worse still, the international obligations of the member states in matters concerning the rights of refugees. Indeed, although some may think that this situation is useful to maintain a plentiful workforce or, to use the term coined by Karl Marx in *Das Kapital*, a copious industrial reserve army, always available to cope with the demands of the economy (whether formal or submerged), they make the mistake of reducing a global social phenomenon (in the sense used by Mauss) to its economic labour dimension. Yet its effectiveness is doubtful because of its combination with (if not subordination to) the dimension of public order, the demand/excuse of the politics of fear that seeks to palliate the loss of aggregation of classes that have been made precarious, producing an effect of social stratification that encourages a structural situation of violation of human rights that is far from complying with the minimal normative assumptions of a rule-of-law state.

8. In what follows, I summarise some of the reflections that I have tried to set out in more detail in the third chapter of the book *Mediterráneo: el naufragio de Europa*, Valencia, Tirant lo Blanch, 2015.

9. For example, among others, in her book *Walled States, Waning Sovereignty* (2010), with a magnificent introductory essay by Étienne Balibar.

10. And the EU is not alone in maintaining the notion of a border that is not so much a police barrier as a military one. We have only to think of what is happening between Mexico and the USA, of the policy being practised by Australia or of what is being suffered by the Rohingyas, a (Muslim) ethnic and religious group of about a million people who live in Rakhine State in Myanmar, rejected by all the nations in southeast Asia.

In reality, despite the constant message of the need for absolute control of borders in terms of a filter that will not allow the passage of undesirables, whom we continue to describe as “illegal” (not so much because they are dangerous delinquents as because they are “surplus” immigrants), it is almost impossible to offer examples of states whose territory is completely sealed, even despite the constant improvements in border surveillance systems. The *porosity* of borders is a further sign of the gradual erosion of state sovereignty, which is even more scandalously visible in the case of the EU with the variable geometry defining its territory and its borders. This ultimately impacts on the mobility of its own citizens, as we are seeing now in the cases of Belgium, Germany and the United Kingdom: the political and judicial connection between sovereignty and territory has been questioned by the multiplication of supranational powers and legislations, the rapid growth and intensification of transnational links and the strengthening of the new global circuits of production and exchange of capital assets.

Having said which, it is necessary to stress that the notion of a border is not equivalent to that of a defensive wall or the confines of sovereignty. Even in classical terms, the distinction between the Roman terms of *limes*, *confines* and *vallum* is very complex. Summarising, almost at the risk of simplifying, I would say that although, in our conception of border, there remains the idea of the confine, limit or barrier of the state, i.e., an instrument of delimitation of territorial sovereignty, it is no less true that in the very origin of this concept a border is, above all, an area of contact, one of tension but also of exchange. And the fact is that, going beyond the artificial delimitations that states agree (or impose), i.e., *construct*, as an ostensible gesture of sovereignty (and therefore of military or police and defence logic), there are social and economic

needs, interests, cultures and peoples that have relationships by virtue of the border as an area or space of contact. In contrast to the notion of a border as a *limes*, i.e., a fortified line that serves to separate civilisation from barbarity, we must revive the dimension of the border as an area of economic and social interaction that can gradually foster exchange, negotiation and mingling: cultural, economic, social and political. That is what the Mediterranean as a border is, a scenario of conflicts, but we are also inevitably constituted by those conflicts. The attitude of closure and blockage, the creation of constant, enormous difficulties that reduce and almost eliminate the area of contact, which, I must emphasise, is not Arcadian, is, in my view, the most serious mistake in our policies of immigration and asylum. A mistake which, moreover, is a very grave contradiction of all the attempts to optimise the benefits that both parties (the EU, of course) could obtain from the existence of a common space.

The waters of the Mediterranean bring us dead bodies, which are only the tip of the iceberg in comparison with the corpses that they conceal

Which said, it is impossible to deny that the border, the Mediterranean as a boundary, from El Tarajal beach to the islands of Kos and Lesbos, has acquired another dimension. One that makes borders areas of violence, of violation of rights. The waters of the Mediterranean bring us dead bodies, which are only the tip of the iceberg in comparison with the corpses that they conceal. For each Alan Kurdi whose photograph moves public opinion there are hundreds of bodies of children that lie hidden at the bottom of the sea. Thus the Mediterranean becomes a border of death, the most dangerous border in the world, a veritable place of fright.

The Mediterranean, a Border of Death, a Place of Fright

The impact of the acts of violence on the border is undeniable: it always is when there is harm, when there is suffering. Because, above all, violence signifies harm, insofar as violence seeks to impose or obtain something by force. And unjustified or disproportionate harm is an evil that the law cannot and must not accept. This idea is strengthened even further if we accept the thesis of some philosophers of law, such as Ballesteros, who maintain that at the heart of the utility of law there is its condition of being a barrier against violence and inequality. Therefore, ideally, law would be “non-discrimination and non-violence.”

Moreover, the nucleus of what law should prohibit, according to the well-known argumentation of John Stuart Mill in *On Liberty*, is *harm* to others. Therefore, the first reflection on that “violence on the borders”, such as what we have seen almost live in Lampedusa, Ceuta or Melilla, is that many of those acts seem to coincide with what we consider crimes, insofar as they reveal disproportionate uses of force, disproportionate threats to life or physical integrity or freedom, in relation to what they seek to avoid, irregular arrival at our borders. We are speaking of harm in terms of basic needs, of primary legal property, of universal human rights. When we see such harm we can say that the borders now signify risk of death, death.

There are those who would deny this premise, reminding us pragmatically that, ultimately, law is yet another form of violence. Their arguments are well-known. Is not law in itself institutional violence? Is that not the real meaning of Weber’s “monopoly on violence”, which means a monopoly on the law as an instrument of coercion and sanction? Is that not where the link between law, power and fear lies, the resort to fear as an instinctive political link (at least as much as the gregarious

herd instinct, the wish to be a slave)? Is that not what was anticipated to us by the axiom *primus in orbe deos facit timor*, a constant feature in political theory, from Greece to the present day, which enunciates the power of fear as a factor of obedience? Does not that conclusion oblige us to make a realistic examination, such as the one proposed by Ross in his disagreement with Kelsen about the distinctive characteristic of law, which he said was not its validity but its coercive effectiveness? Even in art, that view is transmitted to us. For example, in the view of law as expressive violence, at least in the original societies, which Eastwood so expressively reflects in the dialogue in his prizewinning film *Unforgiven*, between the gunfighter/sheriff Little Bill Daggett (Gene Hackman) and gunfighter English Bob (Richard Harris), while Daggett is giving English Bob a terrible beating:

Little Bill Daggett: I guess you think I’m kicking you, Bob. But it ain’t so. *What I’m doing is talking, you hear?* I’m talking to all those villains down there in Kansas. I’m talking to all those villains in Missouri. And all those villains down there in Cheyenne. And what I’m saying is there ain’t no whore’s gold. And if there was, how they wouldn’t want to come looking for it anyhow.

English Bob: A plague on you. A plague on the whole stinking lot of ya, without morals or laws. And all you whores got no laws. You got no honor. It’s no wonder you all emigrated to America, because they wouldn’t have you in England. You’re a lot of savages, that’s what you all are. A bunch of bloody savages. A plague on you. I’ll be back.

Of course, there is another view, another way of understanding the relationship be-

tween force, violence and law. And Eastwood himself offers it to us as a counterpart in another film, *Gran Torino*. To be able to justify this other view, to distinguish the legitimate monopoly on violence from the violence exercised by those who have sufficient power to impose it, it is inevitable to turn to the idea of justice. But then, for it not to be a formal resource that is malleable in the hands of the powerful, it is necessary to relate the use of power to the notion of human rights, the historical concretion of that idea of justice. Only law that is understood as a struggle for law, *Kampf um's Recht* (Ihering), which is resolved in a struggle for rights, *Kampf um Rechte*, can claim to be a different instrument from the recourse to violence. In other words, as Ferrajoli points out, law understood as the law of the weakest. But not in the pre-Nietzschean sense that Callicles showed us, as an ingenious, resentful resource of the weak against the strong individual, the real natural master, but as a recognition of the other, as a struggle for the rights of the other and particularly of the most vulnerable other.

The drift of the EU's migration and asylum policies represents a resurgence of a legal and political tradition that is developing a negation of law

Well, it is precisely the most vulnerable person who seeks asylum, the one who in his own country does not have the right to have rights, the first right, the *Urrecht*. And the struggle for the first right obliges us to make an effective defence of those who cross borders in search of them, in order to achieve recognition of them. An elementary recognition that is the first legal protection: the ancient institution of asylum as an institutional form of hospitality, as Arendt and Brecht insisted with differing emphasis. If the coercive power of law that is exercised on the borders does not respect

those limits, it ceases to be an exercise of the legitimate monopoly on force and it becomes violence. We shall soon return to this point, probably the clearest evidence of the illegitimate drift of European policies of migration and asylum.

However, beyond what is directly visible, the “violence on the borders”, there is another issue, that of the “violence of the borders”, in other words, the question of whether borders are a form of harm, and therefore violence. Furthermore, are they structural violence? I must repeat that for many human beings borders now represent a serious risk of death or of considerable harm to their physical well-being. For many they are a restriction of freedom of circulation that seems discriminatory and unacceptable. Should we abolish them because they are harmful? Or are they just another one of the rules that make freedom possible, albeit at the price of limiting freedom? I am speaking of “violence of the borders” insofar as the legality that now makes and defines borders is a breach of law and rights. Because, in the case of the EU now, and above all (as Naïr has explained) as a consequence of the process of renationalisation of the policies of migration and asylum, borders are an “instrument of war against immigrants and refugees.” Migreurop has been denouncing this for years: it is a war in which the law is a basic instrument, which means the destruction of the rule-of-law state and of what gives meaning to law, the struggle for rights.

I shall repeat something that is obvious: war is a kind of negation of law. It is not a continuation of politics by other means. It is evil. And therefore I think I am justified in saying that the drift of the EU's migration and asylum policies represents a resurgence of a legal and political tradition that is developing a *negation of law*. In fact, this “war against immigrants and refugees” has its excuse (I refuse to call it a justification) in that inversion of the logic of

law that is the principle of discrimination of the other. It is on that negation that the legal architecture of the non-recognition of them is constructed, and it in turn is given concrete expression in the negation of equality (in the negation to the other of recognition of him as a person) and therefore in the absence of a legal status of security. Moreover, this conception has the reinforcement of its functionality from an economic viewpoint; in other words, it serves to feed the business of the exploitation of labour, which shows all its cruel ambiguity in the two extremes of the politics of overexploitation, characteristic of the “bubble economy”, casino capitalism and policies of closure (which in turn, in another way, foster the clandestine networks of exploitation). All this clearly shows the extreme condition of precariousness – the epitome of the condition of “disposability”, of their “liquidity” – that is assigned to immigrants.

In a way, as has been denounced, this use of immigrants points to the link between the new form of slavery that affects immigrants (as workers) and the policies of migration (and of asylum). The thesis is well known. In the same way that we speak of institutional racism and xenophobia, the other face of racism and xenophobia, the policies of migration (and asylum) are the institutional framework that creates favourable conditions for new forms of slavery that affect immigrants (and seekers of asylum); the framework that makes possible policies that cancel fundamental rights of immigrants because of their situation of being immigrants, as repeatedly denounced by rigorous reports by NGOs such as CEAR, Cáritas, APDHA, SOS Racismo, Sanidad para todos, Red Acoge and many others. Those policies form part of a conception which shows that migratory movements are structural pieces of a system and not incomprehensible, wild, spontaneous waves, or invasions. No, migrations are part of a global economic system, which we

call the process of globalisation, governed by the neo-fundamentalist logic of global market capitalism, which spreads inequality and exploitation over the supposed mobility and free flow of the market. The denial of equality (the denial to the other of recognition of him as a person) takes concrete form in the absence of a legal status of security and in the breakdown of the principles of legality and equality before the law, of the guarantee of equal liberty, and the reduction of those subjects (infra-subjects, if not actually non-subjects) to property. In other words, in what is instrumentalised by means of the *law of exception*, which is what migration law is (rather than an aliens law); for, as Lochak points out, it opts for a “state of siege” rather than a rule-of-law state and makes a permanent situation out of the exceptional, provisional, extraordinary situation of a “state of exception.”

The construction of the legal concept of the immigrant as an infra-subject or non-subject has to do, obviously, with the use of the immigrant as an obstacle/problem for purposes of internal partisan consumption

In fact, those infra-subjects are even denied their condition of being immigrants, the right to be immigrants, specified in the right of free circulation (a complex right, as the much-lamented Professor Chueca maintained), which links up directly with the principle of autonomy and its corollary, choosing one’s own plan for how one lives and moving in accordance with it. The construction of the legal concept of the immigrant as an infra-subject or non-subject also has to do, obviously, with the use of the immigrant as an obstacle/problem for purposes of internal partisan consumption. The immigrant as a scapegoat, an external aggressor from whom citizens have to be protected. In this way the system re-establishes its legitimacy, albeit in accordance with the oldest

of the models of legitimation, which, as we saw in *primus in orbe deos facit timor*, is fear. For that reason, I think one can say that those policies of migration and asylum are policies of war, that they seek to inspire fear, to make us afraid, to make us give up our freedom and rights, beginning with the freedom to criticise, for the sake of the supposed protection that they offer us.

I think it is hard to deny that this model of “border policy” violates the inherent logic of the rule-of-law state, its principles and values, its rules: the primacy of the legal rights and interests that are established as having priority because they serve our basic needs. When the whole effort of the migration policy is to conceptualise immigration in times of crisis, as a threat to public order and even to security and defence, it is understandable that it demands the institutionalisation of instruments of exception, such as internment camps, the use of armed forces or their equivalent (the FRONTEX system) and the criminalisation of immigrants. On that basis a legal logic has been established that unfortunately has penetrated into public opinion and that “justifies” limiting, reducing and eliminating the fundamental rights of immigrants and refugees because of being what they are. What is worse, in this process of stigmatisation the refugees are even denied the right to be refugees, the elementary right to ask for asylum.

Moreover, this border policy imposes an old territorial logic of the state, serving notions of market and power and even of sovereignty that are now obsolete: because this version of borders violates the universalist logic of legal and political globalisation, which follows the path of legal cosmopolitanism, at least in matters related to equal recognition of universal human rights and their guarantees. A path in which we see the oxymoron of a notion of state sovereignty that still seeks to place itself above the requirements of the rule-of-law state, i.e., above submission to the law, beginning with human rights.

I must repeat that, in my view, the most serious thing is that this border policy is violence that violates and harms those who are most vulnerable in the eyes of the law, those who are not citizens, who are refugees, and thereby it violates the most elementary right, the right to have rights: asylum. Therefore, as shown by the existence of the immigration detention centres and especially the outsourced camps, and as accredited by the desire to do away with the right to asylum, which is an obsession of many European governments, with the Rajoy Spanish government at the fore, the struggle for the law, for rights and for the rule-of-law state, is now a struggle against the use of borders as violence, a use that, well considered, is a perversion of Heraclitus’s fragment 44, which says: “The people must fight for its law as for its walls” (753 [22 B 44] D. L., IX 2).