

Gregorio Peces-Barba: In Memoriam

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Writing a note in memory of Gregorio Peces-Barba, in response to Professor Carla Faralli's kind request, is no easy task. Gregorio Peces-Barba was a maestro to a large group of teachers and researchers in Spain over the last forty years, and it is possible that I, owing to the fact that I am a member of this group, lack the necessary perspective—that which is afforded by a certain distance—that would allow me to reflect in a suitable way on the importance of his contribution to philosophy of law, and to the Spanish academia during these past decades.

Gregorio Peces-Barba was born in Madrid on January 13, 1938, and passed away in Oviedo on July 24, 2012. Over the course of his life, three important strands, each one of them linked to the other two, are discernible: the practice of law in the early years, politics, and his work as a university professor and researcher. Arguably, the defence of liberties and a certain idea of a just social order were the elements around which all three of these dimensions gelled and which are intertwined in some of his books, which themselves have more than a whiff of the autobiographical, such as his 1996 book *La Democracia en España* and the work he published in 2006, *La España Civil*.

His concern for the theory and practice of liberties was manifest during his student years at the law faculty in the Complutense University in Madrid. On finishing his studies in the Spanish capital, he went on to complete them by studying comparative law at the University of Strasbourg, after which he began a long collaboration with Joaquín Ruiz Giménez, who was later to supervise his doctoral thesis on the social and political thought of Jacques Maritain. He defended his thesis, "Persona, Sociedad, Estado: Pensamiento social y político de Maritain," in April 1970

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and published it in 1973. He took part in the creation of the journal *Cuadernos para el Diálogo*, a publication which was important for its critique of the Francoist regime and which would play a relevant role in propitiating the climate that would later make the transition to democracy possible after the death of General Franco.

From the end of the 1960s and throughout the 1970s he practised law, focusing on the defence of liberties and taking part in a great many trials before the Tribunal de Orden Público (Court of Public Order). His political activities earned him a banning order as a lawyer on the part of the Francoist authorities and confinement in the village of Santa María del Campo for several months in 1969. In 1972 he joined the Partido Socialista Obrero Español (Spanish Socialist Workers' Party, or PSOE in the Spanish acronym), to which he was to belong for the rest of his life. Once democracy had been restored, he was a "diputado" (a member of parliament) during the first three legislatures, between 1977 and 1986. He was one of the seven members of the commission which drew up the first draft of the 1978 Constitution. He presided over the Chamber of Deputies (Congreso de los Diputados) between 1982 and 1986, when he returned to the university to devote his time exclusively to lecturing and research. He then did not take on any political posts until he was appointed High Commissioner for Support of the Victims of Terrorism, from December 2004 until September 2006, a post which he held along with that of rector of the Carlos III University of Madrid.

Gregorio Peces-Barba had the good fortune, something he always recognised, to participate in the drafting of a Constitution, that of 1978, and in the creation of a university, the Carlos III University of Madrid, of which he was rector from 1989 to 2007. He always considered himself an university professor, and in particular a professor of philosophy of law, one who never gave up teaching, not even when he also took on great political responsibilities.

At the Carlos III University of Madrid, he developed a model which always had as a reference point the Institución Libre de Enseñanza and a deep belief in the social function the university had to perform, in the service of knowledge and progress, in a plural and democratic society. He was able to guide the project that began in an old military barracks in Getafe, a working-class industrial satellite town south of Madrid, and make it a reality whose prestige—always linked to and identified with his personal input—has become consolidated in the early years of its existence and which has earned recognition both in Spain and internationally.

As I have pointed out, Gregorio Peces-Barba always considered himself above all a professor of philosophy of law. In that sense, he was very clear about who his intellectual and theoretical references were. The roots of his political and juridical thinking are to be found in the classics of the Enlightenment and democratic socialism. Within the field of philosophy of law, he recognised his debt to those who were his three teachers, Joaquín

Ruiz-Giménez, Elías Díaz, and Norberto Bobbio. Their influence contributed to forging a way of thinking, one which was always in a process of evolution, and which also benefited from the teachings of Felipe González Vicén, Hans Kelsen, and H. L. A. Hart. With these references he proposed a philosophy of law that contributed to the revitalization and modernization of the legal philosophical scenario in Spain in the last quarter of the twentieth century, in a favourable context marked by the progressive development of liberties and democracy.

His philosophy of law proposed a concept of law that had its roots in positivism, starting from the acceptance of the thesis of the conceptual separation of law and morals and the relationship between law and power; both with institutionalized power and what he considered to be the basic founding fact, clearly running in parallel with the idealism of the Kelsenian Grundnorm. His idea of the philosophy of law is clearly shown in *Introducción a la Filosofía del Derecho* (1983), where he shares the principles of what he considered “a positivist position corrected, and normativism realism.” His conception of the philosophy of law gradually evolved towards a greater consideration of the relevance of the moral dimensions of law and in law, and towards a greater recognition of the role played by the material criteria for the recognition of rules. Thus, in the epilogue to the translation into Castilian of Gustavo Zagrebelsky’s *Il Diritto mite*, he advocated an “open, flexible and even ductile” positivism (*Desacuerdos y acuerdos con una obra importante*, 1995). This evolution was not independent of the elaboration of the criteria around which the distinction between public ethics and private ethics, which is basic in democratic societies, has to be based (*Ética, Poder y Derecho: Reflexiones ante el fin de siglo*, 1995). In his last book, *Diez lecciones sobre Ética, Poder y Derecho*, published in 2010, he summed up his thoughts on these questions.

But it is his theory of fundamental rights, considered the nucleus of the theory of justice, which constitutes his most important contribution to the philosophy of law (his last published piece of writing was precisely the *Prefazione* to the edition of Norberto Bobbio’s *Teoria della giustizia: Lezioni di Filosofia del Diritto*, 1953, published by Arago in April 2012). His academic devotion to fundamental rights, which complemented his professional and political work in favour of the same, began in a context that was hostile to any discourse committed to rights and liberties, that of the final period of the Francoist dictatorship. Starting with his first book, *Derechos Fundamentales* (1973), he progressively elaborated a theory of rights around certain basic elements. Thus, in the first place comes the defence of a dualist concept of rights, according to which these are understood to be the result of the recognition of certain justified moral dimensions. In this way, validity and justice, understood as predicates of law, take their place in the concept of “fundamental rights.” His thought continued to evolve towards

a greater consideration of the place that efficacy occupies within an integral vision of rights (*Curso de derechos fundamentales: Teoría general*, 1995). In the second place comes the vindication of the historical concept of “fundamental rights” and of the importance of history in any understanding of the same. This vindication was the expression of a perception of the importance of history in the understanding of law and in the study of the philosophy of law. Thus, he identified three contexts, or models, in which fundamental rights emerged in the modern era (the English, French, and American models), and three processes which explain the evolution of rights: recognition, generalization, and internationalization. These three processes would later be complemented by Norberto Bobbio when he alluded to the process of specification of rights. And in the third place comes the realization that the relationship with morality and politics is indispensable for understanding the meaning of law, as it is for understanding the sense of rights.

Gregorio Peces-Barba was a great driving force behind numerous academic and intellectual projects. Having founded, along with Joaquín Ruiz-Giménez, the Institute of Human Rights (Instituto de Derechos Humanos) at the Complutense University in 1980, he then founded the Bartolomé de las Casas Institute of Human Rights (Instituto de Derechos Humanos Bartolomé de las Casas) at the Carlos III University of Madrid in 1993, an institution over which he presided until his death. There he promoted the establishment of post-graduate programmes which have earned recognition both in Spain and abroad. In the same way, he contributed to the creation of collections and journals which are today a reference point in the doctrinal panorama of the philosophy of law, related to rights. He was in charge of the journal *Derechos y Libertades* from the moment of its creation.

His encouragement of academic activity also gave a great impulse to the development of numerous research projects. One to which he devoted a great deal of his time was the elaboration of a History of Fundamental Rights (*Historia de los derechos fundamentales*), on which we, his disciples, and a group of more than three hundred Spanish and foreign researchers, continue to work. This project has already seen the publication of its results in nine volumes. In the same way, he was the principal researcher on the Consolider-Ingenio project *The Age of Rights*, which brings together twelve groups from as many Spanish universities.

He vindicated the function of the philosophy of law in the training of jurists by pushing for the inclusion of iusphilosophical subjects in the programs of Spanish universities. He was a firm defender of democracy’s need for education on the subject of liberty. For that reason he was deeply convinced of the need for education in rights and values (*Educación para la ciudadanía y derechos humanos*, 2007, with E. Fernández, R. de Asís, and F.J. Ansuátegui). From 1996 to 2000 he was president of the Spanish Society of

Juridical and Political Philosophy (Sociedad Española de Filosofía Jurídica y Política).

Throughout his life Gregorio Peces-Barba received recognition for his political and academic achievements, among which the *honoris causa* doctorates awarded by the universities of Vigo, the Universidad Nacional de Educación a Distancia (National Distance Learning University), León, the Middlebury College in Madrid, Saint Louis University, Jaén, Toulouse, the Università “Amedeo Avogrado” of Piemonte Orientale, the Pontificia Universidad Católica in Peru, and that of Cádiz. But the greatest source of pride for him, looking at the same time backwards and towards the future, was the group of professors and researchers that he formed over many years, and the doctoral theses that he supervised. This group, made up of professors who carry out their activities in various universities, is characterized by their sharing not only certain theories on law and rights, but also a determined concept of what the university means. It is the group of professors to whom Norberto Bobbio referred when, on one of his visits to the Carlos III University of Madrid, he exclaimed, “Mi glorio della Scuola di Gregorio.”¹

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¹ “I take pride in Gregorio’s School.”