# WHAT DOES IT MEAN TO BE OBJECTIVE?

## OUTLINING AN OBJECTIVE APPROACH TO PUBLIC EMERGENCIES AND NATURAL DISASTERS

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ABSTRACT

The present paper is devoted to coping with the problem of objectivity in political justification and legal reasoning when it comes to assessing the occurrence of public emergencies and natural disasters. After shedding some light on the pragmatics of objectivity in representative speech, I will try to demonstrate why there might be reasons to believe that Schmitt-inspired approaches to legal emergencies, very much in fashion today, would owe a great part of their appeal to a refusal to see all that might be involved when we talk about objectivity in morals as well as in politics. To do that, a constructivist notion of "human welfare" will offer the interpretive key.

KEYWORDS

Emergencies, Natural Disasters, Objectivity, Welfare, Representations

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What does the notion of "emergency" mean? For many years, legal doctrine has sought to provide a uniform definition of it. The challenge had its point. As empirical studies suggest, «the abusive reference to emergency as a pretext to illegally lead a political battle, or to introduce permanent modification of the law without respecting legal forms», to quote G. Tusseau, is a well-established fact even in constitutional regimes containing explicit norms to regulate what can be done when *some* unexpected situations arise (TUSSEAU 2011, 500; cf. CAMP KEITH, POE 2004) [1]. Therefore, if you are a legal scholar committed to the Rule of Law principle and eager to put political authorities in their place, holding them accountable, it is reasonable to suppose that one of the most effective ways to do so would be to obtain a definition of emergency as uniform and precise as semantics allows. Unfortunately, in the long run, those efforts have proved to be worthless. Emergencies, at least in one sense, are precisely "unexpected situations" (GUIBOURG 2003), and it seems rather paradoxical to demand a definition in advance for something that no one knows how it will look like in the future.

Unlike "emergency", it gives the impression that the notion of a "natural disaster" is, so to speak, less politically malleable. Moreover, statements about natural disasters would claim a kind of objectivity that does not seem to be present in many statements about emergency situations, except when those situations amount to natural disasters. Compare, for instance, earthquakes or

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[1]  Although inexpectancy has not raised total agreement among jurists as a distinctive mark of emergencies, at least for those who subscribe this premise not any unexpected situation can give rise to an emergency. So, for instance, a landslide victory of an extremely populist politician and his/her party would not count as such a phenomenon, despite the "unexpected character" it might have. Here it is necessary to distinguish between mere social expectations and those expectations any legal system must take for granted as a precondition of its normative force. As might be seen, emergencies are to be couched in terms of the latter type of expectations, not in terms of the former. I would like to thank an anonymous reviewer for raising this as well as other important issues.

floods, on the one hand, with economic emergencies or security crisis, on the other. While the first kind of phenomena usually arouse unanimous agreement over their occurrence, the second kind of phenomena tend to generate lengthy disputes and irreconcilable views. Why does this happen? Is it because statements about disasters are value-free and statements about emergencies are value-laden? Is it because disasters relate to natural phenomena, whereas emergencies relate to social phenomena? Or is it because disasters possess an ontological dimension that emergencies simply lack?

Many people fear that, if this were the case, emergency legislation would be out of control, for objective reference is the only antidote against political arbitrariness (PAMPOU-TCHIVOUNDA 1983; JESTAZ 1968). In this paper, however, I will try to dispel this fear. Resting on Searle's terminology (SEARLE 1995), I will argue that even if disasters deserve to be credited with the kind of *ontological objectivity* that some have given to them, the very same kind of objectivity that emergencies would lack, such a recognition will not ensure *all the objectivity* that is needed to justify political decisions and legal arrangements. Next to ontological objectivity in the sense of Searle's there are other sorts of objectivity, and many of them are not only necessary but sometimes also sufficient to arrive at justified decisions to face any given problem, be it a natural disaster or a public emergency. For that very reason, in the rest of the paper the conceptual distinction between emergencies and disasters, assuming there is one to be made, will frequently pass unnoticed[2].

The paper will be structured in four sections and a conclusion. In section 1, I offer a general characterization of objectivity in relation to our representations by mainly focusing on one of their traditional features, namely "accuracy". The election of this feature is somehow arbitrary, but it was done with the sole purpose of allowing us to understand how objectivity is commonly alleged in practical contexts. In section 2, I address the question of objectivity in relation to values, given the central place this question occupies in practical philosophy, including moral philosophy, legal philosophy and political philosophy. In sections 3 and 4, probably the most relevant of the paper, I cope with the problem of

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[2]   A note of caution is here in order. Many legislations (e.g. Argentina, Chile, Spain, etc.) make a distinction between "emergencies" and "natural disasters", not to mention other concepts such as "catastrophes" or "states of exception". However, notwithstanding the alleged differences between them, what these legislations usually accomplish by prescribing the use of one concept (e.g. emergency) over the others is a plainly functional role. In other words, it is not as if an emergency (or a disaster) were to be invoked only when certain empirical conditions are met, although that could be the case. Rather, it is as if an emergency (or a disaster) were to be invoked because of the normative consequences taking place on behalf of it. In the last section of this paper, we will see how, according to some authors, emergencies (or natural disasters) can be split in two moments, which I will refer as the *representational* and the *decisional* moments. In the following pages, however, I will mainly focus on the representational side of both emergencies and disasters, arguing that the objective assessment of their occurrence need not presuppose any kind of ontological difference.

objectivity in political justification and legal reasoning when trying to assess the real nature of emergencies and natural disasters, among other types of phenomena. To do that, I invoke a constructivist notion of human welfare inspired in authors such as N. Rescher and J. Rawls. And finally, in the last section, I end up reflecting on why there may be reasons to believe that Schmitt-inspired approaches to legal emergencies, very much in fashion today, would owe a great part of their appeal to a refusal to see all that might be involved when we talk about objectivity in morals as well as in politics.

## 1. *Objectivity and "Objective Talk": Facts, Representations and Points of View*

«The notion of "objectivity" – Gareth Evans once said – arises as a result of conceiving a situation in which a subject has experience as involving a duality: on the one hand, there is *that of which there is an experience* (part of the world) and, on the other, there is *the experience of it* (an event in the subject's biography)» (EVANS 1985, 277). As a general framework to cope with objectivity, Evans' remark captures a basic truth that any account would do well to recognize: the notion of "objectivity" involves a duality, for it cannot be put in motion without appealing to the notion of "subjectivity", whatever these notions are supposed to mean. Nonetheless, as a general framework – which is not, of course, what Evans account intends to be – it is rather too specific to provide all that is needed. Moreover, it also seems quite inadequate even to provide what we may call the basics of objectivity. To begin with, because it is mainly focused on the ontological distinction between *that which is there anyway* (cf. WILLIAMS 2006, 153) and *that which cannot be conceived unless some human being gets to think about it or perceive it*. But we all know that "objectivity" comports at least another important distinction, namely: that between those objects, events, properties or matters of fact whose knowledge can be secured independently of *some* of our subjective or idiosyncratic characteristics, and those objects, events, properties or matters of fact for whose knowledge something more specifically subjective or relative to our own idiosyncratic identity is required (*cf.* SEARLE 1995). It is in accordance with this last epistemological distinction that we take colors to be objectively known and, let us say, "the sense of humiliation caused by X's treatment" to be subjectively known, although colors might be, in accordance with some authors, ontologically subjective (STROUD 1999, Ch. 4). Without including such a dimension into the picture, any account of "objectivity" could be all but satisfactorily complete.

So far, "objectivity" has been grasped as containing both an ontological and an epistemological dimension. But what about our speech? In day-to-day parlance, people refer to what others say by recurring to terms such as "objective" and

"subjective". Thus, when it is pouring dawn with rain and Pedro asserts (1) "outside it is raining cats and dogs", Mario, his listener, may assess his way of talking as objective, despite its metaphorical appearance. On the contrary, if Pedro attempts to refer to the very same fact by making the claim that (2) "it is raining as in my childhood memories", Mario would doubtfully assess his assertion in a similar vein. It must be noticed that when people choose to talk the way exemplified in (1), communication success can hardly be explained by pointing to the literal meaning of the terms in play, as if they solely had some sort of mysterious power to put us in correspondence with the facts (PETTIT 1991). Utterances fulfil their roles depending on the wider context where they take place, not on the supposed literal meanings of their terms. Hence, if (1) fulfils a descriptive role and, for the very same reason, is mostly taken as more objective than (2), that cannot be because (1) connects us with the facts whereas (2) does not. For (2) can perfectly lead us to them: both assuming there was such a thing as Pedro's childhood memories, which include representations of rainstorms of a given intensity, similar in kind to the rainstorm reported by Pedro, and that Mario has somehow access to those memories, utterance (2) would have it all. However, the way (2) connects us with the facts seems at least far more indirect than the way (1) does. To put it bluntly, how many different experiences shall we need to live up with until realizing that Pedro's memories of past rainstorms look exactly like the rainstorm he and Mario are currently testifying? Surely utterance (1) truth-value does not demand from us such an exhausting turnaround.

Repeatedly, objective speech is characterized by its level of accuracy or precision (POTTER 1996; WILLIAMS 2002)[3]. In this respect, a sentence such as (3) "there has been an earthquake that caused several victims and damages" does look *a priori* less accurate than a sentence expressing that (4) "there has been an earthquake of magnitude 6 range that caused 125 victims and destruction of buildings". Of course, if (4) is false (e.g. fatalities number only 80) and (3) is true, some might have it that (3) proves to be more objective than (4). But it would be a big mistake to characterize (4) as subjective. A false sentence fails to have a reference; a subjective sentence does not. Furthermore, because (4) is false, such a sentence is not even a candidate for an accurate global statement. Accordingly, because a true sentence is true in virtue of its reference, it can be either objective or subjective. "Accurate", "less accurate" and "inaccurate" sentences, therefore,

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[3]  Of course, this is not at all the only feature of objective speech. Impartiality, for instance, or public accountability, are also recognizable marks. From now on, however, I will try to focus almost exclusively on accuracy, given the importance that this feature has gained in recent jurisprudence when it comes to control emergency legislation. On the other hand, accuracy has been for a long time one of the main concerns of philosophy of science, as this concept applies to scientific models and representations. For further discussion on this topic, see SUÁREZ 2010 and VAN FRAASSEN 2008.

are all possible variants within true speech, whose appropriateness is determined by the values and interests which govern at a given speech context.

Usually, accuracy is postulated as a distinctive dimension of objective speech in virtue of its great potential to evaluate the degree of correspondence between statements and facts. Inaccurate and vague statements are much more difficult to swallow than accurate and precise ones, for the very reason that they make it harder to keep track of the facts. In legal jurisprudence, for instance, there are many well-known decisions that illustrate the point. In Spain, the Constitutional Court rejected an emergency decree passed by the Legislature on the grounds that its justificatory preamble made use of «ritual formula highly abstract that make it almost impossible their constitutional control», such as "the fluctuation of international economy" or "the new available opportunities, more diverse than ever before" (STC 68/2007, FJ 10). In previous work, I tried to take side with the Court's position, proposing an evaluative formula that incorporates the requirement of precision as one of its most salient features (PARMIGIANI 2016). To this we will come back later in more detail. For the moment, however, what I would like to explore is a related issue that runs parallel to the questions of accuracy and objectivity.

By questioning the descriptive statements mentioned in the legislative decree, the Spanish Constitutional Court did not refuse to consider the purposive nature of accuracy. Quite the contrary, it did precisely that, as is revealed by its constant references throughout the document to the goals and needs envisioned by the legislators (STC 68/2007). So, on the Court's opinion, accuracy must also be interpreted in close relation to the practical universe of needs, values, goals or interests. Nevertheless, it seems to me that there is at least one alternative way to understand accuracy and, with it, perhaps objectivity too. What if descriptive sentences are conceived not as referring to facts *out there* (whatever that means), but as sincere expressions of empirical representations *in our heads*? Where would that leave us?

As we know, *perceptual* representations in particular owe part of their content to the perspective adopted by the speaker, such as her degree of proximity from a certain event (*cf.* MOORE 1997, 9). So, for instance, (5) "there is a crowd of people marching to Congress", as uttered by a person who observes the phenomenon from 2 km away and located on the ground level (be it *agent A*), gives us the impression to be less accurate than (6) "there are at most 10.000 people marching to Congress", as uttered by a person who observes the phenomenon from a shorter distance and situated on the top of a downtown towel (be it *agent B*). First impressions, however, might be deceiving once again. If (5) is all that *agent A's* representation authorizes her to say, then (5) is as accurate as it can be *regarding her perspective*. *Mutatis mutandis*, the same is true of (6). Taken in isolation, no sentence can be credited as more accurate than the other one. Now suppose *agent*

C, located nearby *agent B*, must decide which sentence is more accurate. She will probably choose (6), because she shares *agent B*'s perspective[4]. Nevertheless, what she cannot say is that (6) is more accurate considered from *agent A*'s perspective, for (5) is as accurate as it can be.

Although the previous remarks go in the direction of signaling how accuracy is relative to perspective[5] and, in that sense, not a clear objective mark of our speech, objectivity can nonetheless be achieved through an alternative route. Suppose we add *agent A*'s representation to *agent B*'s representation and integrate them into a single, more comprehensive one. According to this new representation (let us call it *C*), given A and B perspectives, A's representation is as accurate as it can be and B's representation is as accurate as it can be. In fact, representation C is a representation whose content is the conjunction of the other two representations, A and B, relativized to the perspectives or standpoints of their respective agents (cf. MOORE 1997; STRAWSON 1985). But representation C is also relative to a different perspective, whose accuracy must be evaluated in its own terms. What are the implications? For objectivity to obtain, if that means to reach a representation whose accuracy supersedes the level of accuracy of its competitors, non-relativity does not need to be a requirement, even taking for granted that such a thing as an *Absolute Conception of the World* were unproblematic (cf. WILLIAMS 2006; PUTNAM 1992). All we need to assume is that the perspective in question relates to the very same facts to which the other perspectives are related, and provides a reasonable explanation of how the other two representations (in this case, A and B) have been generated. Let it be (7) "there are 9.870 people marching to Congress" the content of D, uttered by an official agent. Statement (7) will be compatible with statements (5) and (6), and able to explain why, from A's perspective, it was reasonable to perceive a crowd; and why, from B's perspective, it was reasonable to perceive 10.000 people at most.

Here, as can be noticed, we have reached a representation that is less individually perspectival than the other two, though we may not yet dear to call it 'non-perspectival', absolutely speaking. Of course, if this is all what it means to be

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[4]  In *The Reasons We Can Share*, Korsgaard insists on how fundamental it is to understand objectivity about moral claims the fact that ends or goals that initially spring from our own subjectivity become shareable (KORSGAARD 1996a). Epistemologically speaking, there seems to be no substantive difference between the way we get to appreciate perceptual representations of people differently located and the way we get to appreciate their interests and values. That does not mean, of course, that there are no differences whatsoever. On this topic, see STRAWSON 1985.

[5]  «What is accuracy?», asks Van Fraassen in *Scientific Representation*, to which he answers: «The evaluation of a representation as accurate or inaccurate is highly context-dependent. A subway map, for example, is typically not to scale, but only shows topological structure. Relative to its typical use and our typical need, it is accurate; with a change in use or need, it would at once have to be classified as inaccurate. Similarly, in one political context, or relative to a certain kind of evaluation, a caricature may rightly be judged to be accurate, in another misleading or blatantly false» (VAN FRAASSEN 2008, 15).

objective, so far we have managed ourselves to reach objectivity. "More comprehensiveness", however, does not bring "more accuracy". In what sense could such a comprehensive but nonetheless perspectival representation be more accurate than representations A and B, which are also perspectival but surely less comprehensive? In the remainder of this section I would like to reconcile accuracy and objectivity by stressing the *purposive* nature of our representational practices.

To recap, I hope it became clear from our earlier discussion that perceptual representation (5) can be considered more accurate than perceptual representation (6) *only when* each of them is measured against the benchmark of a single given purpose, such as to determine *exactly* how many people were marching to Congress (from now on, P1). This purpose, on its part, may have its roots in another purpose, such as to fill in an official report (P2), which similarly may have its roots in another purpose, such as to make a comparison among protests during a certain historical period (P3), and so on and so forth. On the contrary, were it the purpose to determine, for instance, how things look like from a certain local standpoint (P4), representations (5) and (6) would not have been apt for any kind of comparison. But another representation, in possession of a person (agent E) located in the same space coordinates than agent A, surely would have been so. Assume that agent E claims the same as agent B, namely that (6') "there are at most 10.000 marching to Congress". That statement would have been more accurate than agent A's statement in relation to P1 *and* to the fact that there were, indeed, 9.870 people marching to Congress. Would it have been, nonetheless, the most objective statement?

To answer that question, it serves no purpose to bring back again onto the stage statement (7), which is the most accurate regarding (P1). For (7) was also probably asserted from a standpoint which is as local as agents' A or B respective standpoints. The issue, therefore, seems to be to determine how much local-relativity statement (7) might be permitted to embrace. Certainly, if the official agent who uttered that statement was in the same position as agent B, his representation, though more accurate than hers, under no concept would have been more objective. From a realistic point of view, it seems rather odd that nothing less than an official agent filling in a report could have arrived at a statement like (7) on no other ground than a representation formed as the result of seeing people passing by on the streets from the top of a building. In similar situations, there usually are certain standard procedures, such as comparing TV images, carrying out interviews, collecting testimonies, calculating people per square meter, and many others. Some of these experiences (e.g. comparing TV images) are based on perceptual representations, which are intentionally carried out to satisfy a given purpose, like counting people, for instance. But others (e.g. collecting testimonies or calculating people) cannot be strictly equated with perceptual representations. If they are related to perceptual representations, their

relation is a bit indirect: a representation based on a testimony is only indirectly perceptual, for it relates to perceptual representations through the experiences of the witnesses. So, when analyzing how local-relative official agent's representations supposedly are, the answer seems rather blurry, for the very reason that it is the question that now looks bewildering.

One thing is certain: compared to agent B's representation, the official agent's representation is far less local-relative. And, for thus being, it seems to be way more objective than the other one. But to frame the issue in these terms would be an oversimplification. The official agent's representation is more objective than agent B's representation not only because the local standpoints on which it rests are more varied than B's single local standpoint, but because it depends on standpoints whose nature is not even "local", strictly speaking. To be precise, if we define *counting procedures* and *hearing testimonies* as authentic possible standpoints among others, then official agent's point of view will be more objective than any of the other viewpoints already mentioned; but not because of its independence, but because its dependence would be relative to a wider range of standpoints. In Thomas Nagel's words: «The wider the range of subjective types to which a form of understanding is accessible – the less it depends on specific subjective capacities – the more objective it is» (NAGEL 1986, 16).

As might be seen, objectivity has finally been reconciled with accuracy, for (7), as introduced in our story, is clearly less dependent on specific standpoints than representations (5) or (6), not to mention many others that might have been formed around the protest. And yet, regarding purpose (P1), (7) is also the most accurate representation, when compared to the other two. Of course, a person located on the top of the downtown towel nearby agent B might have asserted that there were 9.870 people marching to Congress. If that were the case, what would it follow? Perhaps that this person's statement would have been as objective and accurate as official agent's statement regarding (P1)? Not really, unless such a person could back her assertion with as many relevant information sources as the official agent was capable of. In the present case, only a reference to these kinds of sources would manage to provide the necessary reasons to justify the claim. So, in the end, for accuracy to be of any value at all, *some* situations would demand objectivity as its ultimate bedrock (cf. *infra*).

## 2. *Objectivity in Motion: Values, Experiences and Decisions*

As a corollary of our earlier discussion, we have that perceptual representations are perspectival in at least two senses: first, in the sense that they cannot be conceived independently of the context or location where they are caused; and second, in the sense that the attributes or features ascribable to them, such as accuracy, precision or

specificity, are all purpose-relative. Notice that throughout this presentation the focus was mainly put on perceptual representations, but theoretical or scientific representations may have been perfectly invoked from the start. Certainly, if they were not, it is because scientific representations seem by far less local-relative than perceptual representations, and the examples aimed at uncovering the perspective-prone nature of accuracy. Nevertheless, scientific representations are as intentional or purpose-relative as perceptual representations, and that must suffice for the moment to evince their perspectival and context-dependent nature (SUÁREZ 2010). Now, if we focus on the disanalogies, there is at least one single difference that stands out clearly. While perceptual-representations of secondary qualities, for instance, despite their intentionality, seem to be spontaneously *"wrung* from us by the world"*, to use de Vries and Coates' jargon (2009, 138), scientific representations, and even empirical representations such as those carried out by the official agent in our example, would lack the same level of spontaneity. Or, to put it differently, their generation will usually demand from us to play a more active role, like constructing models, collecting evidence, discussing with colleagues, making experiments, revising old theories, and so on.

If we now compare perceptual representations, scientific representations and the way purposes and values are usually represented, differences clearly stand out again. For sure, purposes and values are also perspectival. Some of them spring from our desires, tastes, projects and preferences, which are subjective states of human beings, perhaps so deeply and inextricably linked to our core selves as to make them irreducible perspectival (NAGEL 1986; MCGINN 1983). Some others spring from our interests and needs, which are less subjective states of human beings, idiosyncratic or culturally induced though they may be (ZIMMERLING 1990; GARZÓN VALDÉS 1993; WIGGINS 1998). If these ways of conceiving values conceal the adoption of a more detached attitude toward them, then probably there is not the slightest chance to admit objectivity in the reign of value. Moral expressivism, by the way, seems to have taken note too seriously of these subtleties, getting the most out of them. But there is a different approach toward values that does not seem to reflect such a subjective character. In accordance with a variety of moral cognitivism called "relationalism", our value representations and statements have authentic descriptive-content, for they are oriented to single out what it would be necessary for a certain being to flourish or progress, be it human or not. So, for instance, if «we can determine a particular plant's nature and then ascertain what states of the world benefit its continued existence [...] we can learn what would have to occur for it to flourish» (MOORE 2004, 88). Thus, as Moore claims, «value is not cut off from the world» (MOORE 2004, 88). In a similar fashion, if we can determine Pedro's attitudes and abilities and then ascertain what states of the world would favor them, we might find out what is objectively good for Pedro, no matter what he thinks or feels about it. Furthermore, we might even ascertain what states of the world are objectively

valuable for Pedro on the ground of his tastes and preferences, of what he thinks and feels about them. Here, our ultimate moral position will be subjectivist, but nothing in our ascertainment of what is valuable for Pedro would lack descriptive content.

I am aware that such a position faces insurmountable difficulties, starting with its unexpressed relativist commitment (BLACKBURN 1993, 177-178; WILLIAMS 2006, 156-160). But far from my intention to take side with it, we may see that for anyone to represent something as a value there is no need to adopt a subjective stance toward that very thing. An important remark is here in order. As von Wright noticed, there are *instrumental values* that can be objectively assessed by value-judgements, that is: by objectively true or false judgements. Think of a sharp knife. Does it make sense to say that it is a good knife or a better knife? Surely it does. It just happens that, to know when and why, first we need to take for granted what von Wright would call «the subjective setting of the purpose» that might be in play (VON WRIGHT 1963, 25). Be it, for instance, «to cut the smoothest possible slices» (VON WRIGHT 1963, 25). If there is not a sharper knife to accomplish that purpose, phrases such as "this is the best knife" or "this is a better knife" would be objectively true, and «the facts that in such judgments a subjective setting of the purpose is necessarily presupposed, that they may be vague, and that they may contain reference to a user» can never jeopardize their descriptive content (VON WRIGHT 1963, 29-30). For similar reasons, our value-judgement (8) "x is good for Pedro" (where x can be replaced either by an action or by a state of affairs) would also be objectively true, even though something such as Pedro's desires need to be presupposed.

But what about when non-instrumental values are at stake? What about things that are represented by certain people as *wanted in themselves*, just as if they were in possession of an *intrinsic value* (VON WRIGHT 1963, 103)?[6] Regarding these values, it is always possible to adopt an external observer's stance and formulate a perfectly truth-apt sentence assessing that (9) "x is represented by Pedro as an intrinsically valuable thing". What we cannot do by ourselves from the external stance, however, is to represent x as possessing an intrinsic value, for that would entail the utterance of an authentic value-judgement, as was the case in relation to (8). Von Wright believes that this happens because, by claiming (9), we are not valuing

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[6] Following Moore and Ross, Korsgaard has warned that the *intrinsic value* of things shall not be equated with the fact that those things are *wanted in themselves,* or *wanted for their own sake*, since that would make the value of things dependent on our desires and, just because of that, *relational*. But if intrinsic value can only exist as an ontologically objective attribute of things, as Moore and Ross believe, Korsgaard suggests we better come up with a new conceptual background. Korsgaard proposes to replace this usual understanding of the expression for the concept of *unconditional value*, which prompts us to acknowledge that for a thing to be of intrinsic value we do not need to drop desires out of morality; instead, we must only accept that such a thing might be desirable *no matter the circumstances*. For further discussion on this topic see KORSGAARD 1996b.

anything but reporting or conjecturing «about human reactions, *i. e.* such reactions which we call valuations» (VON WRIGHT 1963, 74). With the first part of his thesis I have no objections, since a sentence like (9) clearly fulfils a reporting function. Now, may the objects of those reports be identified as mere human reactions? If they are assimilated to crude, uncontrolled and spontaneous responses elicited by the world with no mediation of human intelligence or deliberation, it is of course out of question that neither value representations nor purposes (or the way we represent them) can easily be accommodated within that class of entities. But if they are not – as I suppose there are strong reasons to believe (WIGGINS 1998; NUSSBAUM 1994) –, then *at least some* value representations would be more assimilable to scientific representations than to *certain* perceptual representations, especially those presumably wrung from us by the world.

The real consequences of this possible assimilation are not easy to predict and, in any case, there is no time for the moment to tackle them in due form. As far as we are concerned, the *most urgent* issue is to determine whether there can be any kind of objectivity in relation to our first-person representations of non-instrumental values. What does it mean to be objective in this field? Does it make any sense at all to raise the issue of objectivity in relation to these so-called representations? Some authors, like Nagel, tend to think that even regarding our most personal projects or desires there is always the possibility of adopting a more-or-less detached attitude (cf. NAGEL 1986, 329-330). Noteworthy among them are certain perfectionist philosophers, who not only believe that rational deliberation sometimes offers the most objective way to approach our true self but that some agents other than the one in question might be, on certain occasions, better positioned to represent what to value. Liberals, of course, tend to disagree with this position on respectable grounds (MILL 1859, Ch. 3). Nonetheless, be it as it may, the *second and most relevant* issue is to evaluate how objectivity is supposed to work when the values and purposes that might be the object of a representation, independently if it is individually possessed or inter-subjectively shared, generate practical implications of such an impact that not only must concern single persons but other persons as well, not to mention society as a whole. Liberals or not, who would deny that we are here moving in the terrain of politics rather than morals?

## 3. *Representing Phenomena in the Realm of Politics: What Kind of Objectivity Are We Looking For?*

Purposes and values, as we have seen so far, serve to make it evident the adequacy of our true descriptive statements. Purposes and values, however, are sometimes gratuitous, captious or even arbitrary. A person who cannot see that there is no chance for her to achieve a certain goal, and yet stubbornly insists on pursuing it,

acts irrationally because her purpose is not what it should be. Of course, drawing a sharp distinction between arbitrary and non-arbitrary purposes is a rather complex issue. Regarding others' purposes and values, there is always a risk of inadmissible paternalism when we try to assess them from an external standpoint. On some occasions, individual grounds for action appear to be so strange or idiosyncratic that they prove, in Nagel's words, *objectively inaccessible*: «To take an example in our midst: people who want to be able to run twenty-six miles without stopping are not exactly irrational, but their reasons can be understood only from the perspective of a value system that some find alien to the point of unintelligibility» (NAGEL 1986, 330). On those occasions, deliberation and reasons may prove inconclusive. But when values and purposes are *our own* and demand decisions that may have *intersubjective implications*, the need for a justification does always come in first place.

Political decisions are just like this. Conflictive situations arise every day, and political actors need to be prepared to face them in accordance whit their values and purposes, which are partially shaped by their ideologies, overviews and party memberships, among other factors. Yet everything has a limit, especially in politics. There, not everything counts. In a political system deemed constitutional, republican, parliamentary and democratic, politicians must adequate their values and purposes to the restrictions imposed by the system. For a law to be passed, for instance, there are certain procedures that need to be respected. Deliberative procedures in particular are precisely designed to convince both our political adversaries and our fellow citizens that the solutions proposed to overcome conflictive situations are, overall, in *our* best or *impartial* interest, as some philosophers named them (NINO 1996b, especially Chapter 5). This means that, at the end of the process, as many people as possible shall be conducted to recognize that the reasons to support a decision are more compelling than the reasons to reject it, making it reasonable to embrace certain purposes and values. In the hypothetical case that *my own* purpose (or my own value) ends up winning general acceptance, such a purpose will become *our own* purpose (or such a value *our own* value), and, in the same vein, my original personal representation may become *our own*.

In ordinary politics, despite idealistic assumptions, things work pretty much like this. But here our main concern are emergency situations and naturals disasters, which seem to put on hold day-to-day public affairs. If we compare how the universe of purposes and values behave in both scenarios, no significant differences are visible. Novel situations demand original decisions, which force us to revise our established priorities to act again on some new consensual basis. Legislative reforms, executive decrees and administrative acts do all seem to accommodate such a general scheme. But extraordinary situations seem to require decision procedures equally extraordinary, which at the same time would trigger no less extraordinary measures. Current politics, however, as is extensively documented,

has certainly turned the exception into the rule (ROSENKRANTZ 2010; GOODMAN 2010). As a way of calling attention to this worldwide phenomenon, some scholars dare to go as far as to suggest that we would be living under a *constitutional dictatorship* (LEVINSON, BALKIN 2010). Qualifications notwithstanding, what options do we have when political discretion «creeps into non-emergency governance, corroding the rule of law» (GOODMAN 2010, 1263)?

Objectivity has an unquestionable initial appeal. In many Ibero-American countries such as Argentina, Colombia and Spain, for emergency legislation to be authorized by the judiciary, there must be granted that certain facts – namely, the facts alleged by political authorities as meriting extraordinary legislative responses – have actually occurred. Earlier in this paper, it was mentioned how the Spanish Constitutional Court proceeds to check political decisions triggered by presumed emergency situations. According to the Court, when a political organ (be it the President or the Legislature) makes reference to certain events, facts or states of affairs, ritual formula or highly abstract statements must be discarded for the benefit of a more objective control. Here, as we have seen, accuracy is the value in place. For the Colombian Constitutional Court, on its part, it would be 'attachment to details' rather than accuracy the most revealing sign of objectivity (cf. C-156/11; PARMIGIANI 2016, 333). But if such a requirement is, in Potter's words, «a contrastive category», and «what is detailed from one perspective might be gross and vague from another» (POTTER 1996, 163), this seems reason enough to confirm much of what we have been claiming so far: neither accuracy nor attachment to details (or specificity, if you prefer) will do as clear marks of objectivity unless we first become aware of the purposes and values governing at a given context.

Once that condition is fulfilled, of course, there are compelling reasons to believe that the way toward objectivity will be more paved in case our politicians make a real effort to justify their decisions on accurate and specific statements. But, unfortunately, that is not comfort enough when their values and purposes are so pretentious and unrealistic that almost anything can count as fitting the mold of a potential emergency. By way of illustration, think of a politician radically committed to the idea of equality, however she decides to define it. On her opinion, whichever state of the world wherein equality is not realized appears as intolerable, and thus deserves to be addressed with urgency and determination. In comparison with real practice, the example sounds ludicrous, for most of our constitutional systems are supposedly designed to ensure that discretionary powers be exerted only when *exogenous* and *unanticipated* events require immediate reaction (GOODMAN 2010, 1269). In Argentina, for instance, an important part of legal doctrine specifies that emergencies can only be issued to handle *inevitable* or *unexpected* situations (GUIBOURG 2003; CIURO CALDANI 2007). Nonetheless, as I previously tried to make it plain somewhere else, even these categories are context and purpose-relative

(PARMIGIANI 2016). What a model deems predictable, another model does not, and the same diagnosis seems applicable to the remaining categories.

In the *Introduction* to this paper I mentioned a contrast between factual statements about emergencies and factual statements about natural disasters such as earthquakes, floods or plagues, which at first value would enshrine more objectivity than the formers. One way to read the difference between these kinds of statements, as I started to suggest at the beginning, consists in focusing on the kind of agreement they are capable of arousing. Many years ago, Feyerabend and Maxwell came up with a suggestive idea to capture what could be here at stake. They coined the expression "quickly decidable sentence" to account for the sentences that «a reliable, reasonably sophisticated language user can very quickly decide whether to assert it or deny it when he is reporting on a current situation» (MAXWELL 1962, 13). Their proposal, of course, was meant to offer a more clear-cut solution to the old observational-theoretical dichotomy. If there is no alternative but to recognize that the line dividing theory from observation is, to some extent, arbitrary, perhaps these quickly decidable sentences – Maxwell thought – could do the work in science that traditionally was assigned to observational sentences. But what does all this reveal applied to our problem? It seems undeniable that statements about emergencies tend to generate disputes of such a lengthiness that any pretension to assimilate the way they work with the way quickly decidable sentences work will be doomed to failure (cf. *supra*). In contrast, sentences about natural disasters seem, precisely, more easily decidable. Contrary to these impressions, however, my contention is that Feyerabend and Maxwell's terminology just offers a new name for an old problem, but hardly a solution. In plain words, because now we might very well accept that sentences about natural disasters are easier to decide, and yet have no idea why this is supposed to be so; and, which is even worse, no idea what it would have to happen for sentences about emergencies to gain decidability.

On top of that, the idea of a quickly decidable sentence introduces at least two additional difficulties. Firstly, as is apparent from the definition, its satisfaction amounts to concepts such as "reliability", "reasonability", "sophistication" and "quickness", which are all context-relative and value-laden. And secondly, invoked in the context of our discussion, the idea tends to hide what is particularly distinctive about natural disasters, namely: that their assessment and real impact, far from being easily decidable matters, generally presuppose a lot of *reflexive* work at the baseline. Of course, natural phenomena such as earthquakes, tsunamis, bacteriological plagues or floods, and even man-made phenomena such as radioactive leaks, oil spills or water contamination (here I just assume that the line between "natural" and "man-made" can be drawn to some extent), all belong to a category that could be termed, following John Austin, "middle-size dry facts" (cf. WILLIAMS 2006, 146). Brute as they are, no one needs to submerge too much into

theoretical digressions to credit them as veridical. So, if Quine is right, statements about these phenomena would assimilate observation sentences, given their *occasional* character and how they are «anchored to sensory neural intake irrespective of their theoretical subject matter» (QUINE 1993, 110). Recall, however, that these phenomena do not necessarily amount to natural disasters. For example, are earthquakes classifiable as natural disasters when, let us say, no casualties and no loss of property result as their consequences? It doesn't seem very likely.

Disaster's sociologists have put a great deal of effort to elucidate what we talk about when we talk about "disasters". No single definition has gained total agreement. A few examples suffice to illustrate the point. Kreps defines disasters as «nonroutine events in societies [...] that involve social disruption and physical harm» (KROLL-SMITH, GUNTER 1998, 163). According to Porfiriev, a disaster is «a state/condition destabilizing the social system that manifests itself in a malfunctioning or disruption of connections and communications between its elements or social units» (KROLL-SMITH, GUNTER 1998, 163). On his part, Horlick-Jones defines disasters as «[events that] release repressed anxiety [and constitute a story of the] loss of control of social order» (KROLL-SMITH, GUNTER 1998, 164). As the examples show, there is no coincidence among sociologists about what a disaster could be. However, there is at least one feature that all these definitions have in common: disasters are somehow *related to* human welfare. To be classified as a disaster, a single natural phenomenon must exhibit how it negatively affects human welfare, whatever may be the aspects under consideration: physical, psychological, economical, etc. Henceforth, it could be inferred as a corollary that any attempt to characterize a phenomenon as a disaster, it is necessary for it to exhibit a *relational or extrinsic property*, namely: that of affecting an inherent aspect of human welfare to a certain extent.

Here there is not time to go deeper into the nature of relational or extrinsic properties, certainly a mayor topic in metaphysics (for further discussion see KIM 1982; LEWIS 1983; VALLENTYNE 1997; LANGTON, LEWIS 1998). Suffice it to say for the moment that if we define "extrinsic properties" the way Searle does, that is: as «observer-relative features» of facts whose existence depends on «our interests, attitudes, stances, purposes, etc.» (SEARLE 1995, 12), or even on our values – we may add –, statements about disasters risk inheriting the kind of subjectivity that seems to surround statements about emergencies, when our deepest intuition precisely goes in the opposite direction. In *The Construction of Social Reality*, Searle is quite explicit in separating ontological subjectivity/objectivity from epistemic subjectivity/objectivity (cf. SEARLE 1995, 8). Based on this distinction, it is rather evident that certain objects and facts, as well as their properties, may be ontologically subjective but, nonetheless, epistemically objective. That such and such an object is a screwdriver is, ontologically speaking, a subjective fact, for there is no way of ascertaining it that does not rest on an intentional act ascribing

the object such and such a function. But the fact evinces epistemic objectivity, since there is a criterion to determine the true of the statement that such and such an object is a screwdriver which is *completely independent* of the attitudes, purposes or intentions that might be contingently assumed by *certain* people *in some determinate* circumstances.

So, if natural disasters are ontologically subjective phenomena whose subjective nature responds to their extrinsic (or observer-relative) properties, it goes without saying what the next question is: are natural disasters *epistemically* subjective phenomena? In the end, it all seems to depend on how we deal to define *human or social welfare*, which would be the ultimate concept behind any representation of a disaster. The next section will offer a negative answer to this question by invoking a notion of human welfare in perfect shape – or so I will argue – to guarantee the precise type of objectivity that might be sufficient in the realm of politics.

## 4. *Epistemic Objectivity and the Role of 'Welfare' as a Normative Notion*

As bibliographical evidence clearly shows, any attempt to define "welfare" poses a series of questions anything but simple. To begin with one of the most relevant: does it make any sense at all to conceive an objective notion of "welfare", as it certainly does to come up with an objective notion of a "screwdriver"? Just like concepts of man-made objects and facts such as screwdrivers and economic recessions, "welfare" is a notion whose denotation would be an empty set were it not for the fact that certain human beings once decided to use it with a given purpose. However, unlike the concepts of "screwdriver" or "economic recession", whose references are clearly *factual*, "welfare" is a normative-value-laden notion that is mainly used not so much to identify a given phenomenon as the basis upon which to evaluate its moral, political or economic character (cf. DARWALL 2002, 10-13). To express it in Kantian terminology, "welfare" would be a regulative ideal rather than a constitutive concept. Once in possession of the concept of "screwdriver", we can proceed to identify different exemplars of it in a non-problematic way. Nonetheless, it might be the case that there be nothing factual corresponding to the way we understand "welfare". Of course, we usually predicate of certain objects that they fare (or do not fare) well in given circumstances. But are such statements objectively true or false? Is there a chance of ascertaining them as objectively truth-apt although the only criterion to do that depends on something as intangible as an ideal?

In a classical study on the concept (precisely entitled *Welfare*), Nicholas Rescher stressed its intrinsically value-laden nature. As a value, he said, "welfare" represents nothing less than an *intangible*, that is: a thing of the mind having to do «with the vision people have of the good life for themselves and their fellows»

(RESCHER 1972, 23). But its being so, he added, shall not lead us to believe that in 'welfare talk' there is no place for objectivity. To prove his point, Rescher goes on to attack the liberal *deep-rooted feeling*, as he calls it, that «no one can have a better understanding of the issues relating to person's own affairs – and, above all, those regarding his own welfare and well-being – than the man himself» (RESCHER 1972, 14). Such a feeling is misguided because, on his opinion, it misses the difference that would exist between *being informed* and *concern*: «No doubt the man himself is in general more concerned about his welfare interests than others, but that certainly does not mean that he is usually better informed about them» (RESCHER 1972, 15). On the contrary, because human welfare would find in medical health its perfect analogue, to give an account of how well a person's life might fare based on how that person feels would be as counterintuitive as to give an account of how healthy a patient is solely based on his subjective feelings (*cf.* RESCHER 1972, 15). Rescher concludes:

> «Judgments of welfare are matters of (objective) knowledge and not matters of (subjective) feeling. Thus whether a person's welfare is in better-or worse-shape than it used to be is an issue about which others may well be better informed than he. Welfare is thus not in any immediate way a matter of psychological feelings or moods or states of mind; rather, it is a function of the extent to which certain objective circumstances are realized, namely, those generally regarded as representing requisites for the achievement of happiness in the existing life environment (RESCHER 1972, 17)».

There is no doubt that Rescher introduces here an important distinction. For anyone familiar with the difference that separates merely *wanting something* from *needing it*, or *desires* from *vital interests* (WIGGINS 1998, 24; FRANKFURT 1988), Rescher's distinction is common-sense parlance. Notice, however, that this is not in question in the present context. What we are here trying to do is to determine whether the ingredients of someone's welfare can be couched irrespective of anybody else's merely subjective standpoint. And here is where Rescher's general overview on human or social welfare becomes silent. To be fair, it is necessary to recognize that Rescher outlines an impressive list of criteria «for assessing the degree of realization of a man's welfare», which includes physical health, mental health, material prosperity, personal assets and environmental resources such as "availability of goods for personal use", "availability of personal services" and "quality of the environment (artificial and natural, social, public health, etc.)" (RESCHER 1972, 12-13). As can be realized, most of these criteria are objective in the sense that the presence or absence of what they specify can be assessed from an intersubjective perspective. However, who is supposed to make the list? What are the fundamentals of it? Is it a list given once and for all?

*Pace* Rescher, among certain philosophers there seems to reign a wide consensus not necessarily on who is supposed to make the list or determine its content, but on what any such list must generally imply from a methodological point of view. Consider for instance the way Thomas Schwartz assesses the value of welfare in his critique of von Wright's own conception of it:

> «To promote someone's welfare is to help ensure that he enjoys those conditions which any normal person needs in order successfully to pursue his life-plan – his goals and projects – *whatever* that plan be. On this view, welfare-needs are *basic* in that they are needed for the successful pursuit of *any* (normal) life-plan and so provide a *basis* whence to lead one's life; *less* basic needs are peculiar to this or that *particular* life-plan (SCHWARTZ 1989, 223)».

The structure of the reasoning can be characterized as follows: whatever we decide to value most (e.g. the successful pursuit of a given life-plan), its realization would not be possible unless certain conditions are satisfied. Human welfare, therefore, can be understood as a sort of cluster concept (recall that Rescher also defines it as a cluster or *package value*; see RESCHER 1972, 26) encompassing the manifold conditions that must be granted for *any* human being to pursue whatever s/he deems valuable. But as soon as the structure of the reasoning is thus exposed, an important nuance cries for recognition, since the materialization of many things people deem valuable may conflict with the materialization of other people's values. Hence, for example, availability of personal services might be, as Rescher imagines, a necessary condition to pursue my life-plan, but if my life-plan includes as a value to exterminate a whole race from a community, we better come up with a less objectionable formula.

Earlier I mentioned that Rescher did not offer an answer regarding who is supposed to make the list of conditions clustered under the heading of "welfare". To that question, moral constructivism would have a solution. Probably in what it is its most remarkable exemplar, namely John Rawls' theory of justice, the very solution comes with a surplus: it indicates not only who is to make the call but also how this is intended to happen. In an old paper published before *A Theory of Justice* (i.e *Distributive Justice: Some Addenda* from 1968), Rawls argued against the utilitarian theory of the impartial sympathetic spectator by first establishing who is the relevant agent to arrive at a decision when it comes to principles of practical reasoning. He writes:

The principles of practical reasoning for an entity capable of decision are to be decided upon by that entity. Thus the principle of choice for a rational individual is his to make; but, similarly, the principles of social choice must be adopted by the association itself, that is, by the individuals that constitute it (RAWLS 1999a, 173).

Utilitarianism, resting on D. Hume, pretended to adjudicate this latter task to «an ideally impartial and sympathetic spectator who identifies with all the

interests in conflict and who thinks of each interest as if it were his own» (RAWLS 1999a, 174). But, as Rawls would claim three years later in his major work, this would imply not to «take seriously the plurality and distinctness of individuals» (RAWLS 1971, 29). *Impartial* decisions, he would affirm later on in the same work, shall not be confused with *impersonal* ones (RAWLS 1971, sec. #30). What then are the options still left open? Once established that it is individuals themselves who must decide the principles of social choice, the remaining question is how this is supposed to happen. And here is where Rawls', Scanlon's, or even some other authors' Kantian constructivism clearly stands out.

On Rawls's account, for instance, objectivity in morals «is to be understood in terms of a suitable constructed social point of view that all can accept» (RAWLS 1999b, 307). So, if we are interested in determining the criteria that, from now on, whenever and wherever, shall help us evaluate the justice of our institutions and social arrangements, the solution can only stem from a perspective ensuring that each party involved be similarly situated. Rawls' *original position* precisely represents that perspective, for individuals who must there decide which principles will apply to the basic structure of society – as Rawls calls «the political constitution and the principal economic and social arrangements» (RAWLS 1999c, 226) – lack relevant information regarding, among other things, «their class position or social status [...] their deeper aims and interests, or their particular psychological makeup» (RAWLS 1999c, 226). In the end, the fairness of the procedure is what guarantees that the principles unanimously chosen as a result are morally objective. As we know, Rawls postulates two principles, which establish the primary goods no person can do without for her particular life-plan to be minimally accessible (cf. RAWLS 1999d, 362-363). Some of these primary goods surprisingly coincide with those included in Rescher's list quoted above. Now, if we take the license to assume that these primary goods or basic liberties encompass the minimal conditions of human welfare – certainly, given its utilitarian roots, Rawls would not have allowed the use of this expression (cf. Rawls 1999e, 66) – what else do we need to complete the whole picture?

Back to our main issue, I would like to suggest that *insofar as it is admitted the possibility of founding a concept of social welfare – whose prominent aspects, I would like to repeat, are now depicted in terms of needs, vital interests or primary goods – upon a constructivist basis (be it Rawls', Scanlon's or some other), not only statements about natural disasters, but even statements referred to other kinds of man-made events that might be covered under the term "emergencies", will merit a truly objective approach.* This admission cannot pretend to deny how fundamental political initiative is to cope with certain social problems. Nor does it pretend to hide the importance that political purposes and values usually have in order to highlight the aspects of reality that must sometimes demand our closest attention. As far as I am concerned, these two tasks are intimately related and much of what has been

argued along these pages aimed at disclosing exactly that relation. But disasters and emergencies are also assessable from less than a merely contingent political standpoint. In fact, what a constructivist proposal allows us to do is precisely that. So, if we return to the beginning of the paper and ask again what objectivity means, the answer is crystal clear: it just means to embrace a criterion that allows us all to evaluate what could be at stake in certain circumstances despite the contingent preferences of some political authorities.

Contrary to first impressions, under no concept does this entail that assessments of disasters or emergencies formulated from a constructivist concept of human welfare will be less value-dependent and, *just for that reason*, more objective than any other assessment. In Rawls' construction, for instance, the primary goods that are postulated as the result of a procedural decision subject to certain constraints can only function «in the light of a conception of the person given in advance» (RAWLS 1999d, 367). And this conception is clearly value-laden, for it implies «viewing each person as a *moral* person moved by two *highest-order interests*, namely, the interests to realize and to exercise the two powers of moral personality», which are: «the capacity for a sense of right and justice (the capacity to honor fair terms of cooperation), and the capacity to decide upon, to revise, and rationally to pursue a conception of the good» (RAWLS 1999d, 365). However, even if no concept of human welfare is in optimal conditions of setting the stage for a non-perspectival, value-free representation of disasters and emergencies, there are some concepts perfectly capable of showing us the facts not as they absolutely are – if not totally spurious, such a pretension would be inappropriate in the present context – but at least as they are disregarding *some* subjective perspectives.

## 5. *Concluding Remarks: The Two Moments of Emergencies and Disasters and the Definitive Place of Objectivity*

For all those that are worried with constitutional dictatorships and undermining the rule of law, such a modest conclusion might be very disappointing. Although it is true that political arbitrariness and personal bias are subject to undeniable limitations, it is no less certain that, instead of our constructivist notion of human welfare, almost any political conception can be in the position to effectively dispute the credibility of a given emergency-statement. Nonetheless, opposing one subjectivity by assuming a subjectivity of a different political sign does not bring more objectivity as a result. In a sense, anyone can pretend things to have been differently assessed. But if disasters and emergencies are what they are because of the goods, interests and vital needs they put in jeopardy, despite the political projects that might have been supposedly neglected, objectivity appears on the horizon not as the simple product of opposing one purpose-relative standpoint

against another, but as an option that is always at hand for anyone concerned with social welfare regardless of political membership.[7]

In reference to legal emergencies in particular, G. Marazzita detects two moments: "*the urgent fact* (or extraordinary fact)", on the one hand, and "*the state of exception* (or emergency regime)", on the other, which is always the declarative product of a political decision (MARAZZITA 2003, 161; TUSSEAU 2011, 522). Along this paper, the focus of the analysis was mainly put on the first moment, that is: on the *representational* rather than on the *decisional* side of the phenomenon. Proceeding that way, the intention was to relieve the logical concerns that might be raised by political arbitrariness, as if a commitment with the facts were our most decisive ally to mitigate that risk. But thanks to Brentano, we all know since long ago that representations are as intentional and purpose-relative as any decision (cf. HOCHBERG 1973). Moreover, complex representations such as the ones involved in describing disaster events and emergencies demand an exercise of our cognitive capacities whose level of reflexivity seems much closer to the deliberative processes carried forward before arriving at decisions than to the relatively simple perceptual experiences that take place before asserting, for example, that such and such an object is red, or humid or tiny. Hence, as things now stand, even admitting the logical possibility of drawing a line between the representational moment and the decisional moment of a legal emergency, since representations resemble decisions, and, furthermore, since representations come to be what they are as the product of certain decisions (e.g. concerning their accuracy or specificity, among other properties), don't we run the risk of letting representations succumb under decisions?

Michel Troper, for example, sees things exactly this way. In *L'état d'exception n'a rien d'exceptionnel* he claims that there simply is no point in trying to split emergencies into two moments, the factual and the declarative, for «the state of exception cannot be defined independently of the rules that apply to it, which are thus constitutive of the state of exception» (TROPER 2011, 101). Seemingly in accordance with him, Marazzita himself takes the *nomen iuris* "emergency" as resulting «from a decision and a value judgement, which are relative and contingent» (TUSSEAU 2011, 522). And even Tusseau sees no point in searching for the denotation of the word "emergency", that he associates to «the persuasive, justificatory and even emotional discourse, which is another way of saying, as Thomas Hobbes wrote, that "*auctoritas non veritas facit legem*"» (TUSSEAU 2011,

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[7] David Wiggins stresses a similar point in *Claims of Needs*. As a «limitative principle that must regulate both rights/counter-rights arbitration and collective reasoning in pursuit of public goods» he proposes this: «it is *pro tanto* unjust if the State or an agency of the State intervenes against contingency, or changes its policy, or confounds citizens' sensible expectations, in a way that sacrifices anyone's strictly vital interests to the mere desires of however many others» (WIGGINS 1998, 43). In line with this proposal, political projects merely committed with non-vital interests, or even utopian ideals, *per se* (that is, with no further ado), would lack justification to advance legislative reforms via emergency procedures.

530). However, as I hope it should be clearer now, from the fact that all emergency representations incorporate an inescapable element of decision in their making, it does not follow that that very element can only be conceived as depending on the very decision to be taken by the political authority in charge.

Of course, it is political authorities rather than any other actor who must issue disaster declarations or pass emergency decrees. It is them and no other who must decide whether assigning grants, offering low-cost loans or exempting some people from tax payment. And no doubt it is only them who have the power to suspend ordinary norms, legitimating behaviors which otherwise would be illegal with the sole purpose of ensuring the return to normality (cf. TUSSEAU 2011, 523-524). Were it not for these powers constitutionally conferred to our representatives, emergency legislation would hardly be an issue. That these powers exist, however, which authorize certain people to decide when the normal expectations supported by the rule of law no longer compel us, shall not be interpreted as also including the prerogative to decide on which value scales certain events are supposed to be represented. Political representation, as far as I am concerned, involves the right to decide on certain matters under the guidance of our best interests as figured out by elected authorities. Imagine for a moment that this were also to include the right to decide how we should evaluate them. Wouldn't such a pretension simply cancel democracy for what is better known?

Schmitt-inspired approaches such as Troper's or even Tusseau's have as a common mark the admission that, be it in a dictatorship or in a democracy, sovereign is he who decides on the state of exception. On this point, I have no complaints, and this certainly raises a serious objection against those approaches that trust on technical organisms such as a *Federal Emergency Board* to determine *what to do* when we are in presence of *real* emergencies or disasters (see, for instance, GOODMAN 2010; LEVINSON, BALKIN 2010). Be it as it may, no matter how absolute his power is, the sovereign would never be in the position to decide for ourselves how things and events – man-made or natural, avoidable or unavoidable, predictable or unpredictable – should be represented. What I tried to present in this paper is an alternative approach both to disasters and emergencies that allows us to understand why their extrinsic nature, couched in terms their value-relativity, is no impediment to foster toward them a more objective assessment. This means, on the one hand, that in order to recognize a disaster as a disaster, or an emergency as an emergency, we do not have to wait until the political authority decides to declare it as such (for a similar point concerning the definition of social events, see MERTON 1976, 211). But it also reveals, on the other hand, that if our goal is to provide a more objective evaluative stance from which to represent the occurrence of certain events, not any project or scale of values will do. Whether the constructivist concept of social welfare here proposed has enough credentials to face the challenge is still, I think, an arguable matter. Hopefully it is not a sign of conformity.

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