

IACL-AIDC- ROUND TABLE ON “POLITICAL SENTIMENTS AND MORAL EMOTIONS IN CONSTITUTIONAL LAW”, Cordoba, Argentina, August 8th and 9th, 2022.

SOME REFLECTIONS ON EMOTIONS AND CONSTITUTIONAL SENTIMENTS AND THE ARGENTINE CONSTITUTIONAL CULTURE

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I am really glad that the iacl round table on ‘Political sentiments and moral emotions in Constitutional Law’, presided over by Professor Adrienne Stone is held here in Cordoba. And I remember that this is the second one that takes place here, since the first one took place in 2005 on “Constitutionalism in Times of Emergency”, during the presidency of Professor Cheryl Saunders, when I chaired the Argentine Association of Constitutional Law¹.

I would like to thank Professor Pablo Riberi and the Executive Committee of the International Association for inviting me to participate in this panel together with such distinguished colleagues. I will reflect on the following issues: 1. Emotions and sentiments in the human condition. 2. Constitutional emotions and sentiments in the building of the Constitutions and as part of the constitutional culture. 3. Constitutional emotions and sentiments in the building of the Argentine Constitution. 4. Constitutional emotions and sentiments as part of the constitutional culture. Contempt for the law, internal discord, anomie and constitutional culture in Argentina. 5. Constitutional culture surveys in Argentina. And 6. The interdisciplinary as a method of constitutional law and the importance of civic and democratic education.

1. Emotions and sentiments in the human condition.

López Rosetti affirms in the subtitle of his book²: "We are not rational beings, we are emotional beings who are able to reason" and later, as a clear example, he cites Hamlet's ‘to be or not to be’ Soliloquy, so as to show both, the emotional and the rational in decision-making.³ Hume has held the opinion that emotion and sentiment

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¹ See “Constitutionalism in times of emergency”/”Constitucionalismo en tiempos de emergencia”.

Antonio María Hernández Coordinator, Coauthors: Brewer Carias, Burgorgue-Larsen, Cea Egaña, Cho, Dalla Via, Dyzenchous, Garlicki, González Cruz, Hernández, Rosenfeld, Sabsay, Sagués, Saunders and Vanossi, edited by IACL and Argentine Association of Constitutional Law, *Advocatus*, Córdoba, 2007.

² Daniel López Rosetti, "Emotion and feelings", Planeta, Buenos Aires, 2017. López Rosetti is Director of the UNESCO Bioethics Unit of the San Isidro Hospital attached to the UBA and Professor of Psychophysiology at the Faculty of Psychology of the University Maimonides, in Buenos Aires.

³ Obr. cit., ps. 174/6.

concur in all moral determinations and conclusions⁴. On this, András Sajó⁵ says that “the reason-passion opposition is a gross simplification”...”The enemy of reason is not passion: it is fanaticism. This message of Voltaire is to be remembered in our age of new fanaticism”.

López Rosetti defines emotions as "reactions of our mind and body to living experiences and sentiments, as the result of the conscious elaboration of such experiences"⁶. And he affirms that Thespis, father of the Greek theater, already in the sixth century before Christ, reflected emotions through the use of masks.

The author mentions fear, anger, joy, sadness, disgust and surprise as the six main emotions and contempt as the seventh emotion, although some scholars deny it, because it requires a certain conscious component related to thought. Emotions and sentiments such as love, hate, faith, guilt, shame, jealousy and envy are part of the human condition⁷. And he attributes to Charles Darwin's (with his work) "The expression of Emotions in Animals and in Man", written in 1872 and his emotional psychology of evolution, an enormous influence on Sigmund Freud, founding father of psychology, in addition to the contributions of Greek mythology with Osiris, and classics like Seneca and Shakespeare, among others.

2 Constitutional emotions and sentiments in the building of the Constitutions and as part of the constitutional culture.

András Sajó has deeply dealt with emotions and sentiments in relation to the Constitution in various pieces of work⁸. Says Sajó: **“Emotions participate in building a constitution and a culture of constitutionalism,** and then these creatures of constitutional sentiment patrol emotion display. The scientific evidence indicates that reason and emotion operate interactively in human decision-making as well as in the actual process of legal institution building. Emotions are not momentary personal feelings, headaches to be forgotten as soon as the pain goes away. The scholarship regarding emotions has demonstrated that emotions contain social information, contribute to social coordination, and are culturally regulated. Emotions are social, because they pertain to a specie that is “obligatorily gregarious.” These socially interacting emotions become patterns, and the relatively stable social clusters of these

⁴ David Hume, “An Inquiry concerning human understanding and concerning moral principles”, Oxford Clarendon Press, 1975, 3rd. Edition, p.172.

⁵ András Sajó, “Constitutional sentiments”, Acta Jurídica Hungarica, 47, No. 1, 2006, p. 3.

⁶ López Rosetti, obr. cit., p. 59.

⁷ López Rosetti, obr. cit., p. 64.

⁸ As in his book “Constitutional Sentiments”, Yale University Press, 2011, among other Works that I will quote below.

emotional patterns become the facts of social life, taking the form of public sentiments”⁹.

And regarding **his research**, Sajó states: “My research hypothesis is that emotions, through complicated mechanisms, do have an actual impact on constitutional design. By improving our knowledge regarding emotions, we can improve constitutional design”. “Such research has to consider many interrelated matters: first, it is about the impact of sentiments and the assumptions regarding emotions in constitutional law; second, it is about the effort of constitutional law to handle and shape public sentiments; thirdly, it considers (the) public reactions, including emotional ones, on constitutional arrangements; and finally, it is about the actual impact on constitutional and other legal designs on the social construction and use of sentiments”¹⁰

Later, Sajó recalls the **thinking of classical authors**: “Among many others, Hume, Adam Smith, and Rousseau have emphasized that sentiments are constitutive to social institutions. Rousseau's crucial sentiment in this regard is pity and related empathy or, as it was called, sympathy. It is through sympathy, Edmund Burke wrote, “that we enter into the concerns of others; that we are moved as they are moved, and are never suffered to be indifferent spectators of almost anything which men can do or suffer.”¹¹

And he especially quotes Madison: “Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. [...] By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community. Factions bring [...] instability, injustice, and confusion introduced into the public councils [that is, they destroy rational deliberation]. In particular this is the source of the tyranny of the majority.”¹² And Sajó maintains: “In Madison's view the problem is solved by representative government, separation of power and federalism.”¹³ And he adds that Madison “following Montesquieu attributes emotions to the constitutional bodies: “The great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others”..”Ambition must be made to counteract ambition”..”It may be a reflection on human nature, that such devices should be necessary to control

⁹ András Sajó, “The emotions in the constitutional design”, *International Journal of Constitutional Law*, Volume 8, N° 3, July 2010, ps. 354/384. P. 354.

¹⁰ András Sajó: “Constitutional sentiments”, *Acta Jurídica Hungarica*, 47, N° 1, Akadémiai Kiadó, Budapest, 2006, ps.2/3.

¹¹ András Sajó, “Constitutional sentiments”, *Acta Jurídica Hungarica*, 47, N° 1, p. 4, 2006

¹² James Madison, *The Federalist*, 1787, cited by András Sajó, “Constitutional sentiments”, *ob.cit.*,p.5.

¹³ András Sajó: “Constitutional sentiments”, *Acta Jurídica Hungarica*, 47, N° 1, 2006, p. 5.

abuses of government. But was it government itself, but the greatest of all reflection on human nature? If men were angels, no government would be necessary".¹⁴

Regarding **emotions and the constitution building**, Sajó affirms: "How do constitutional sentiments (the specific constitutional and public affairs-oriented part of public sentiments) contribute to constitution building? There are several models for this relationship, beginning with theories that advocate that law should follow emotions and moral intuitions, in particular. I argue that modern societies are emotionally and morally divided, and that constitutions approach public sentiment in a selective way. However, there is a deeper level of neutrality underlying liberal constitutionalism that constitutional sentiments of the late eighteenth century stood for, reflecting an experience of fear of cruelty and oppression. These emotional components of constitutionalism, which formed the genre of the modern constitution, remain crucial."¹⁵

And in relation to the **American Constitution**, the author expresses: "Most emotions are blends of the related feelings and cultural ascriptions, that is, a complex of the blend receives a common name, which has feedback and other regulatory consequences. The blend reflects cultural influences and is organized by the person's self-concept. Framers of the American Constitution relied on a basic emotion of fear related to the experience of English tyranny (the object of emotion); the complex emotion of fear of tyranny reflected their own identity as lovers of freedom"¹⁶. I think one can add to Madison's views on human nature cited above, to support republican checks, the view of Hamilton, who held that men are "ambitious, vindictive and rapacious"¹⁷ and stressed "the influence that personal elements exert in the production of great national events"¹⁸.

And Sajó writes in relation to the **French Revolution**: "The French revolution was a sentimental revolution. Let me quote the Marquis de La Fayette arguing at the National Assembly in favor of the Declaration: "Let me call to mind the sentiments which Nature has engraved in the heart of every citizen, and which take a new force when they are solemnly recognized by all: For a nation to love liberty, it is sufficient that she knows it; and to be free, it is sufficient that she wills it." In this approach, liberty exists in natural sentiments and reason is only there to remind us of our sentiments"¹⁹.

¹⁴ James Madison, *The Federalist*, 1788, N° LI, cfr. obr. cit., p. 5.

¹⁵ Sajó, "The emotion in the constitutional design", obr. cit., p. 355.

¹⁶ Sajó, obr. cit., p. 358.

¹⁷ "El Federalista", Hamilton, Madison y Jay, N° VI (Hamilton), Fondo de Cultura Económica, Mexico, 2006, p 19..

¹⁸ "El Federalista", Hamilton, Madison y Jay, N° VI (Hamilton), Fondo de Cultura Económica, Mexico, 2006, p 20.

¹⁹ András Sajó, "Constitutional sentiments", *Acta Jurídica Hungarica*, 47, N° 1, p. 4, 2006. Regarding **the role of emotions in the current debate**, Sajó says: "The ambivalent role of emotions in democracy is well illustrated in the current debate between Cass Sunstein of Chicago Law School and his critics regarding the proper handling of social risks. The debate centers on those public risks that are quintessential for constitutional law: terrorism, nuclear energy, global warming, etc. Sunstein claims that humans are irrational risk evaluators, partly because of affect that determines risk perception. Scientifically trained experts are less vulnerable to cognitive defects originating in emotional distortions.

For his part, Montesquieu argued²⁰ that the principle that characterized the republic was political virtue, while honor corresponded to the monarchy and fear of despotism. And he considered political virtue - the foundation of the democratic republic - as a passion that implied love of country, equality, laws and frugality. Virtue should be directed to the common good, leaving aside personal greed.²¹

We owe Professor Peter Häberle, a disciple of Konrad Hesse and Rudolf Smend, the studies that demonstrate the **profound relationship between culture and the Constitution**²². Häberle believes that the "Constitution is not limited to being a set of legal texts or a mere compendium of normative rules, but rather the expression of a certain degree of cultural development, a means of self-representation of an entire people, a mirror of their cultural legacy and foundation of their hopes and desires"²³. And he adds: "... the legal reality of every Constitutional State is just a fragment of the reality of every living Constitution, which throughout its text and context is but one of its cultural forms. Hence, the very texts of the Constitution must be literally "cultivated" (the word culture as a noun comes from the Latin verb *cultivare*) so that they become an authentic Constitution"²⁴.

Thus, the jurist defines constitutional culture as "the sum of attitudes and ideas, of subjective experiences, scales of values and subjective expectations and of the corresponding objective actions both at the personal level of the citizen and that of his associations, as well as at the level of state bodies and at any other level related to the Constitution"²⁵. Consequently, there is no doubt that **constitutional emotions and sentiments are part of constitutional culture.**

It thus makes sense to transfer decision-making in these areas to experts insulated from political processes."

²⁰ Especially in his seminal book *The Spirit of the Laws*

²¹ Montesquieu also argued that the abandonment of political virtues led to corruption and violation of the laws, with the possibility of the destruction of the republic.

²² In particular, his work "*Teoría de la Constitución como ciencia de la cultura*" (Theory of the Constitution as a science of culture") should be highlighted. Tecnos, Madrid, 2000, but whose 1st. Edition was from 1982 in Berlin, Germany, under the title "*Verfassungslehre als Kulturwissenschaft*", Duncker & Humblot. There the autor condenses his thought in ten theses.

²³ Peter Häberle, *ob.cit.t.*, p.. 34.

²⁴ Peter Häberle, *ob.cit.t.*, p.. 35. And Pablo Riberi wonders if the Constitution: "Is only a fundamental norm or perhaps represents a political-cultural-moral milestone" and affirm: "...Unlike other legal rules, the vast majority of the words of the Constitution have been macerated in the vital experience of ordinary people" ("*Los fundamentos de la Constitución y un dogma incierto-politica y filosofía interpeladas-*", en "*Fundamentos y desafíos de la teoria constitucional constemporánea*", Pablo Riberi Coordinador, UNAM, Mexico, 2019, p.22).

²⁵ Peter Häberle, *op .cit.*, ps. 36/37. The author in the book "*The Constitutional State*", has also referred to the link between education and the Constitution, arguing that the Supreme Law is a school and teaching text, that it must educate for itself and that it must tend to a pedagogy constitutional where the constitutional principles are the ends of education. We, who share this vision of the importance of civic and democratic education based on constitutional values, cannot fail to point out with great regret that the last National Education Law does not mention among its purposes the teaching of the Constitution.

These concepts about emotions and sentiments also serve to understand our **constitutional making-process**.

3. Constitutional emotions and sentiments in the building of the Argentine Constitution.

Fear of tyranny and love of freedom²⁶ and the federal republic were the sentiments that guided the sanction of the National Constitution in 1853²⁷.

The Art. 29 enunciated the reject of tyranny with great eloquence: “Congress cannot grant the Executive nor the Provincial Legislatures to the Provincial Governors, extraordinary powers, nor the sum of public power, nor grant them submissions or supremacies, for which the life, honor or fortunes of Argentines citizens remain at the mercy of governments or any person. Such behavior implies an incurable nullity and will subject those who formulate, consent or sign them to the responsibility and penalty of the infamous traitors to the country.”²⁸

The love of freedom and the federal republic has been stated in the Preamble: “We, the representatives of the people of the Argentine Nation, gathered in the General Constituent Congress, by will and election of the Provinces that compose it, in compliance with pre-existing pacts, in order to constitute the national union, strengthen justice, consolidate internal peace, provide for the common defense, promote the general welfare and ensure the benefits of freedom, for us, for our posterity and for all the men of the world who want to inhabit Argentine soil: invoking the protection of God, source of all reason and justice, we order, decree and establish this Constitution, for the Argentine Nation”.

In relation to the Preamble and constitutional emotions and sentiments, it should be especially remembered that in the 1983 presidential campaign, in the transition from dictatorship to democracy, Raul Alfonsín ended his speeches by invoking the Preamble of the National Constitution.

In the Constitutional Reform of 1994, the initial political sentiments were reaffirmed, updated and modernized in the constitutional design. The main ideas of the Reform were the attenuation of hyper-presidentialism, the strengthening of Congress and the independence of the Judiciary, in relation to the republican

²⁶ See Natalio Botana, “La libertad política y su historia”, Ensayo Edhasa, Buenos Aires, 2022.

²⁷ For an analysis of Argentine history on this point, see Antonio María Hernández, “Estudios de federalismo comparado. Argentina, United States and Mexico”, Rubinzal Culzoni Editores, Buenos Aires, 2018, p. 86 and sgts. and the E-Book “Studies in comparative federalism. Argentina, the United States and Mexico”, Editorial of the National University of Córdoba, 2019.

²⁸ The article is a direct reference to the dictatorship of the Governor of the Province of Buenos Aires, Juan Manuel de Rosas, who governed with extraordinary powers and the sum of public power, until his defeat in 1852 in the Battle of Caseros, by Justo José of Urquiza. Through the San Nicolás Agreement, Urquiza promoted the call for the Constituent Convention that in 1853 sanctioned our historic National Constitution. See Antonio María Hernández, “Estudios de federalismo comparado. Argentina, United States and Mexico”, Rubinzal Culzoni, Buenos Aires, 2018 and “Studies in comparative federalism. Argentina, The United States and Mexico”, E-Book, Editorial of the National University of Córdoba, 2019.

system.²⁹ And regarding the ideal of decentralization of power, federalism was deepened, the municipal autonomies recognized and it was established a special status for the Autonomous City of Buenos Aires³⁰. The love of freedom and democracy was expressed in another fundamental strong idea: the recognition of new rights and guarantees and the incorporation of international human rights law³¹. Likewise, another idea was to promote integration both at the national and supranational levels.³²

In relation to the defense of the constitutional order, public ethics and the fight against corruption, Article 36 should be especially highlighted: “This Constitution maintains its validity even when its observance is interrupted by acts of force against the constitutional order and the democratic system. These will be insanelly null. Its authors will be liable to the sanction provided for in article 29, disqualification in perpetuity to hold public office and excluded from the benefits of pardon and commutation of sentences. Those who, as a consequence of these acts, usurp functions foreseen for the authorities of this Constitution or those of the Provinces, who will be liable civilly and criminally for their acts, will have the same sanctions. The respective actions will be imprescriptible. All citizens have the right of resistance against those who execute the acts of force set forth in this article. Whoever incurs in a serious intentional crime against the State that entails illicit enrichment, will also attempt against the democratic system, being disqualified for the time determined by the laws to hold public office or employment. The Congress will sanction a law on public ethics for the exercise of the function”.³³

I think that in the **National Constituent Convention of 1994 -the one with the greatest democratic legitimacy in Argentine history-, an architectural policy was exercised based on fundamental agreements**, which expressed moral emotions and constitutional sentiments.

4. Constitutional emotions and sentiments as part of the constitutional culture. The contempt for the law, internal discord, anomie and constitutional culture in Argentina.

²⁹ See Articles 54, 56, 75, 85, 86, 90, 94, 95, 96, 97, 98, 99, 100, 101, 114, 115 and 120 of the National Constitution and Antonio María Hernández, “A veinticinco años de la reforma constitucional de 1994- Legitimidad, ideas fuerza, diseño constitucional, modernización e incumplimiento”, Imprenta de la UNC, Córdoba, 2019.

³⁰ See Articles 75 paragraphs 30 and 31, 123, 124, 125 and 129 of the National Constitution and Antonio María Hernández, “A veinticinco años de la reforma constitucional de 1994”, ob. Cit. and “Federalismo y constitucionalismo provincial”, Abeledo Perrot, Buenos Aires, 2009..

³¹ See the Chapter Second of New rights and guarantees (Articles 36 to 43) and Articles 75 paragraphs 2,17, 19 y 23 of the National Constitution and Antonio María Hernández, “A veinticinco años de la reforma constitucional de 1994”, ob. Cit...

³² See Articles 75 paragraph 22 and 124 of the National Constitution and Antonio María Hernández, “A veinticinco años de la reforma constitucional de 1994”, ob, cit...

³³ Idem, p. 126/129. In the plenary session of the Constitutional Convention I was a reporting member of this article.

These complex problems -result of moral emotions and political sentiments- affect the constitutional culture in our country, have been pointed out from different perspectives.

In literature, the book “Martín Fierro”, by José Hernández, stands out, with reference to the injustice of the laws that benefitting the powerful people, within the framework of a remarkable account of the life of a “gaucho” in conflict with society and its laws in the 19th century.

In Argentine popular music, the sharp lyrics of the tango “Cambalache”, by Enrique Santos Discépolo, cannot be ignored, since it represents a sociological and evaluative description of the lack of our values in the 20th century.

From the juridical, political and sociological approaches, Juan Bautista Alberdi already anticipated the question when he asked himself in "The Bases", Chapter. XII: “How to make our democracies in name, democracies in reality? How can we actually change our written and nominal freedoms?. And he categorically replied: "Through the education of the people." Later, he also indicated in a premonitory way in Chapter XXXIII, that the regulatory laws of the Constitution could be an instrument of "mystification of the constitutional government" and a stumbling block for the life of the Supreme Law. He also believed that colonial history was marked by arbitrariness and the violation of laws.

It was Juan Agustín García, Professor of Law at the University of Buenos Aires, in his well-known book "La ciudad indiana" aimed at researching our history in the 17th and 18th centuries, who affirmed that "**the contempt of the law**" was one of the four sentiments of that time³⁴.

Referring to the law in colonial times, he said: “... the theoretical law was admirable for its charitable goodness; the royal legislation recommended the good treatment, education and conversion of the Indians. But unfortunately, in all of Spanish America, the study of written law is the least important and illustrative: law, good or bad, grows and develops at the root of the soil, protecting not only the most skillful ones, but also, the strongest.”³⁵

In addition to the arbitrariness of the Cabildos in the regulation of trade and monopoly, the author mentioned the paternalism, as a consequence of the monarchy.³⁶

³⁴ Juan Agustín García, "La Cijudad indiana" (The Indian City), 2nd. Edition, Buenos Aires, Ángel Estrada y Cía-Editores, 1909. This acute thought of José Manuel Estrada is invoked at the beginning of the work: "If we knew in depth the phenomena of colonial society, we would have solved three quarters of the problems that overwhelm us". The first reference to contempt for the law as a national sentiment is included in the book's preface, p. 7.

³⁵ Juan Agustín García, ob. Cit., Ch. "Las Campañas"(The campaigns), ps.. 34/35.

³⁶ Juan Agustín García, ob. Cit., Ch. "La administración de la ciudad"("The City Administration"), pg. 151. The author maintains that the Cabildos were a "sad parody of the Castilian Councils destroyed by Carlos V after the battle of Villalar (p. 157) and that the aldermen were appointed by the dismissed, with the approval of the Governor who sometimes also appointed the themselves" (p. 164). He also makes a

García described the exercise of absolute power by the colonial authorities and the absence of rights of the gaucho, which gave rise to "...the sentiment of contempt of the law in the depths of his soul. In his imagination it is the symbol of the arbitrariness, of brutal and capricious force, embodied in a bossy official: the "alcalde pedáneo"³⁷ ... always ready to bend the rod of justice in favor of the prestigious landowners, always connected to the Capital"³⁸ .

Later he expressed that the struggle between the individual and the State that began in the colonial era "... reaches its apogee with the caudillos, the montoneras and anarchy, the complete triumph of individualism."³⁹ In the Conclusion García indicated that the essential characteristics of our policy was **"...the predominance of the classic concept of providence-state, political centralization, inferior and subordinate role of the assemblies; and in the people, to accentuate and fortify these tendencies, contempt for the law turned into instinct, into one of the motives of the will"**. And then the autor asserted: "It can be affirmed, without fear of incurring into a paradox, that the country it has not come out of the old regime."⁴⁰.

Joaquín V. González in his "Juicio del Siglo" (Trial of the Century), of 1910, maintained that the **"law of internal discord"** (also known as the law of hate) had marked the course of institutional and political life in our first 100 years, for the seriousness of the civil wars, among other facts.⁴¹ For my part, I have already mentioned that the same thing happened in the following 100 years, with very serious episodes of political violence.⁴² In my personal opinion, Argentina has been characterized by an agonal policy to obtain and maintain power, when the most important thing is to exercise an architectural policy, which requires special agreements to solve the structural problems of the country, based on the full validity of the National Constitution.⁴³

comparison between them and the North Americans, pointing out the contrast with that reality that showed the constitutional charters and the political practices that indicated an ardent defense of ideals, interests and the government itself.

³⁷ A local and municipal judge.

³⁸ Juan Agustín García, ob. Cit., Ch. "El proletariado en las campañas" (The proletariat in the campaigns), ps.. 262/3.

³⁹ Idem, ps. 298/9.

⁴⁰ Idem, Conclusión, ps. 365/6.

⁴¹ See Antonio María Hernández, "Fortalezas y debilidades constitucionales. Una lectura crítica en el Bicentenario" (Constitutional strengths and weaknesses-A critical reading in the Bicentennial), Abeledo Perrot, Buenos Aires, 2012, Chap. II, "The validity of the thought of Joaquín V. González in his Trial of the Century of 1910, p. 10/13.. González used to say, quoting Rabindranath Tagore, that we didn't understand each other because we didn't love each other and we didn't love each other because we didn't understand each other.

⁴² Idem, "La violencia política", (The political violence), ps. 140/151. There were interruptions of the constitutional order in 1930, 1943, 1955, 1962, 1966 and 1976, among other serious episodes.

⁴³ Obr. cit., where I expose the respective proposals to solve this problem, pp. 157/168.

The largest study carried out on **anomie⁴⁴ in our country** corresponded to Carlos Santiago Nino, Professor of Law at the Universities of Buenos Aires and Yale, with his book: “Un país al margen de la ley” (A country outside the law)⁴⁵.

With an interdisciplinary vision, Nino showed why Argentina had a history outside the law and how this also produced our underdevelopment. Nino wrote: "This tendency to anomie, or more specifically to illegality, is involved in many of the factors that are pointed out as relevant to explain the involution of Argentine development, in addition to having an independent causal power"⁴⁶ . And he argued that Argentina's anomie was quite easy to perceive as it arose from the massive violation of human rights in the 1970s through state terrorism and leftist terrorism. But he also mentioned a less dramatic case: that of the external image of society through traffic on streets and routes, cleanliness in public places or urban aesthetics⁴⁷.

And after referring to other aspects such as corruption or the involution of economic growth, he referred to political instability, with these terms: "Such political instability culminated in coups, which, as is obvious, constituted the maximum expression of Argentine illegality. But there are more indirect ways in which political instability was related to illegality: electoral fraud, like the one practiced before the Sáenz Peña Law and in the “infamous decade”, and electoral bans, like the one that first occurred with Radicalism in that decade and later with Peronism from 1958 to 1973, the abuse of federal interventions, the usurpation by the Executive of Congress powers, the manipulation of Justice, the abuse of the state of siege, seriously affected the subjective legitimacy of the Argentine political system and, consequently, also contributed to the weakness of social adherence to it, which is a precondition for it to be subverted by force”⁴⁸.

The central thesis of the book was aimed at demonstrating how anomie operated in itself as a factor that produced inefficiency⁴⁹.

Quoting Jon Elster, in his concept that "rules are the cement of society", he argued that laws "make possible the integrity and subsistence of societies" and consequently,

⁴⁴ For the analysis of the concept of anomie, see Antonio María Hernández, Daniel Zovatto and Manuel Mora y Araujo, “Encuesta de cultura constitucional. Argentina: una sociedad anómica” (Survey on constitutional culture. Argentina: an anomic society), National Autonomous University of Mexico, Argentine Association of Constitutional Law and International Idea, Mexico, 2005, First Part, Preliminary Considerations, of my authorship, pp. 8 and sgts.

⁴⁵ Carlos Santiago Nino, “Un país al margen de la ley- Estudio de la anomia como componente del subdesarrollo argentino”, (A country outside the law- Study of anomie as a component of Argentine underdevelopment), Emecé, Buenos Aires, 1992.

⁴⁶ Ob. Cit, p. 24.

⁴⁷ Ob. Cit, p. 25.

⁴⁸ Obr. cit., p. 28.

⁴⁹ Obr. cit., p. 28.

"illegality and anomie, in general, affect social productivity, at least under a capitalist system", as Max Weber taught.⁵⁰

Nino also introduced a new classification of anomie to explain the Argentine case, which he called "foolish", because the non-observance of the rules affected values such as security and predictability and generated inefficient collective action.⁵¹

With remarkable sharpness, he then referred to anomie in the institutional and social life of our country, to norms as tools of cooperation and to getting out of the trap of anomie, for which he proposed a process of public discussion and popular education to promote attitudes of normative loyalty.⁵²

Finally, Nino characterized anomie as anti-democratic, since it is the non-observance of rules that must be sanctioned by majority rule after a discussion process, and in our case it meant a deficiency in the materialization of democracy, because it implied the existence of so much authoritarianism.⁵³

In the book "Emergencies, constitutional order and Covid19" I support the thesis that throughout history emergency institutes have generally been used to violate the constitutional system, the republican order and the validity of human rights⁵⁴. Also in other books of my authorship I have pointed out the systematic violations produced to the national and provincial laws and constitutions⁵⁵. That is to say that Nino thought

⁵⁰ Obr. cit., ps. 31/32. With regard to the latter, he quoted Max Weber in his book "The Protestant Ethic and the Spirit of Capitalism", which stated: "... modern rational industrial capitalism needs both the technical means of calculating work, and a predictable law and an administration guided by formal rules; Without this, adventurous, commercial, speculative capitalism and all kinds of political capitalism are possible, but private commercial industry with fixed capital and secure calculation is impossible".

⁵¹ Obr. cit., p. 40.

⁵² Obr. cit., Chaps. 2, 3, 5 and 6 respectively, whose reading I especially recommend..

⁵³ Obr. cit., Epílogo, p.. 272.

⁵⁴ See Antonio María Hernández, "Las emergencias y el orden constitucional" (Emergencies and constitutional order) in its two editions: 1st, Rubinzal-Culzoni, Buenos Aires, 2002, 2nd expanded, National Autonomous University of Mexico and Rubinzal-Culzoni Editores, Mexico, 2003, with a Foreword by Diego Valadés and "Emergencias, orden constitucional y Covid19" (Emergencies, constitutional order and Covid19), Rubinzal Culzoni Editores, Buenos Aires, 2020.

⁵⁵ Like my books "Derecho Municipal" (Municipal Law) in its different editions of 1984 and 1997, Depalma, Buenos Aires and 2003 by the National Autonomous University of Mexico, Mexico; "Federalismo, autonomía municipal y la Ciudad de Buenos Aires en la Reforma Constitucional de 1994" (Federalism, municipal autonomy and the city of Buenos Aires in the constitutional reform of 1994), Depalma, Buenos Aires, 1997; "Integración y globalización: rol de las regiones, provincias y municipalidades" (Integration and globalization: role of the regions, provinces and municipalities), Depalma, Buenos Aires, 2000; "El Caso Fayt y sus implicancias constitucionales" (The Fayt Case and its constitutional implications), National Academy of Law and Social Sciences of Córdoba, Córdoba, 2001 and 2nd. Edition by Abeledo Perrot, Buenos Aires, 2012; "Derecho Constitucional" (Constitutional Law), co-authored with Susana Albanese, Alberto Dalla Via, Roberto Gargarella and Daniel Sabsay, Editorial Universidad, Buenos Aires, 2004, among other works and articles, that I will quote. A bookwork that we directed together with Diego Valadés has recently been published, under the title "La Constitución y el combate a la corrupción" (The Constitution and the fight against corruption), Institute of Legal Research of the UNAM, Mexico, 2022, where this topic is analyzed in several Latin American countries. and from Europe, such as Italy and Spain. As will be noted, this is a question intimately linked to the subject I am analyzing and which constitute one of the central problems of any political regime.

remains current. And especially given the hyper-presidentialism and the decline of Congress that we suffer, the government by Decrees of the Executive Branch, corruption, attacks on the independence of the Judiciary and freedom of the press, among other serious institutional problems.⁵⁶

In the **two Constitutional Culture Surveys**, which I will comment on later, the lack of trust in the institutions and the break of the Constitution and the laws are categorically perceived. I am convinced that **there are also emotional and sentimental reasons that explain this**. An example is the answer to the question “**Why do you think the laws are not being complied with?**”, incorporated in this Second Survey, which led to 33% of the respondents answering that this is due to the malfunctioning of the judicial system, followed by 30 % that attributes it to the **bad behavior of the human being** and 17% due to the malfunction of the punishment system, as majority opinions. To this I add that regarding values, when asked if there is great agreement in our society about **what is good and what is bad, 53% answered in disagreement and 20% in strongly disagree**.

5. Constitutional Culture Surveys in Argentina.

This permanent concern for one of the juridical and cultural problems in our country, led me to accept the proposal expressed by Dr. Diego Valadés⁵⁷ to carry out surveys on constitutional culture in Latin American countries.

As President of the Argentine Association of Constitutional Law with the financial support of International Idea, we carried out the first survey, published in the book “**Encuesta de cultura constitucional. Argentina: una sociedad anómica**” (Survey of constitutional culture. Argentina: an anomie society), by Antonio María Hernández, Daniel Zovatto and Manuel Mora y Araujo.⁵⁸

In the Introduction of the book, we exposed with Daniel Zovatto: “The work that we are presenting is of an **interdisciplinary nature -legal, political and sociological- and has been prepared based on a national opinion poll that is unprecedented in**

⁵⁶ See my books “Fortalezas y debilidades constitucionales. Una lectura crítica en el Bicentenario” (Constitutional Strengths and Weaknesses. A critical reading in the Bicentennial), Abeledo Perrot, Buenos Aires, 2012, “A veinticinco años de la reforma constitucional de 1994” (Twenty-five years after the constitutional reform of 1994), Editorial de la UNC, Córdoba, 2019; “Emergencias, orden constitucional y Covid19” (Emergencies, constitutional order and Covid19), afore cited, and “Constitutional Law in Argentina”, Encyclopaedia International of Laws, Walter Kluwer, 2022.

⁵⁷ At that time Director of the Legal Research Institute of the National Autonomous University of Mexico and one of the co-authors of the book “Cultura de la Constitución en México” (Culture of the Constitution in Mexico) together with Hugo Concha Cantú, Héctor Fix Fierro and Julia Flores, edited by the that Institute of the National Autonomous University of Mexico, México, 2004. The invitation was made by Valadés at the presentation of said book within the Congress, to the National Associations of Constitutional Law attending the Congress on Culture and Comparative Legal Systems, held in the Federal District of Mexico in 2004.

⁵⁸ Edited by the National Autonomous University of Mexico, the National Association of Constitutional Law of Argentina and Idea Internacional, Mexico, 2005.

Argentina. Its immediate objective is to reflect in one of the most serious problems that our country presents, which is the **non-compliance with the laws and the Constitution, in order to invite deep reflection and debate in search of the full validity of the constitutional and democratic rule of law.** There is also a mediate objective, which is to **comparatively analyze this issue in Latin America**, given that this research will be included in similar ones to be carried out in the future”⁵⁹.

On the content of the three parts of the book, we argued the following: “The first is intended for the general presentation of the written work and deals with the preliminary considerations, the theoretical and methodological considerations and the profile of the population interviewed. The second part has four chapters analyzing the opinion survey on: 1) Perceptions about the model of society, rights and values; 2) Perceptions about democracy and its values, rules, representation and power; 3) The degree of institutional knowledge and 4) Attitudes, opinions and perceptions about the Constitution. The third part presents the conclusions and proposals, complementing the contribution through suggestions that promote the change of the reality in the country. A statistical annex with all the documentation referring to the opinion poll has been added.”⁶⁰

As I cannot stop for reasons of brevity in the analysis of the entire work, I consider it convenient to concentrate on some conclusions of the **study of the perceptions about the Law and the Constitution**, in Chapter IV of my authorship⁶¹.

Regarding the lack of respect for the Law, in point 1 "Argentina and Argentines citizens against the law", it is stated: “In our country there is a high degree of perception about the lack of respect for the law. In effect, only 11% of those surveyed believe that the laws and the Constitution are respected, while 86% maintain that Argentines live outside the law most of the time. Additionally, it is stated that barely 8% of citizens respect the laws and the Constitution, because they value themselves as disobedient and transgressors (88%).

In point 2, "Compliance with the law", the interviewed respond that only 32% of the population complies with the laws, while the National Government does so in 22% and the Provincial Governments in 19%.

In point 3, "Compliance with the National Constitution", it is concluded: “A large percentage of the population (85%) perceives noncompliance with the Constitution (19% no compliance, 66% little compliance). .

In point 5, "Knowledge of the National Constitution", it can be seen: “Practically 77% of those surveyed are unaware of the National Constitution, according to the sum of those who know little (62%) or nothing (15%) about it. On the other hand, 22% declare to know just a bit (19%) and a lot (3%).

⁵⁹ See “Encuesta de cultura constitucional. Argentina: una sociedad anómica”, ob. cit., ps. 1/2..

⁶⁰ See “Encuesta de cultura constitucional. Argentina: una sociedad anómica”, ob. cit., p. 3.

⁶¹ Idem, ps. 81/93.

In point 6, "The lawbreakers", it reads: "In this aspect, the results of the survey are highly worrying because it is perceived that those who violate the law are in descending order: first, politicians, with 74%; second, the police, with 56%; third, public officials, with 49%; fourth, judges, with 41%; fifth, people, with 27%, sixth, lawyers, with 19% and seventh, everyone, with 5%".

In point 8, "Ignorance of the Provincial Constitutions", it is concluded: "The degree of ignorance of the Provincial Constitutions is even more notorious, since this reaches 91% among those who know little (48%) or nothing (43%) about them, and also 2% do not even answer. A scarce 7% declare to know them between quite a lot (6%) and a lot (1%).

In point 9, "Ignorance of the Municipal Organic Charter of Córdoba", it is stated: "The survey carried out in the city of Córdoba, -for being the only city of those surveyed that has its own Organic Charter- also revealed a high degree of ignorance of it (86%), according to the sum among those who said they knew little about it. (32%) and nothing (54%), with an additional 8% who did not know or did not answer the question. Only a scant 6% declared knowing her between quite a bit (3%) and a lot (3%)".

In the **Conclusions**, written by all the co-authors of the book we have agreed on the following: "In short, a social and institutional order where the law is not followed by leaders, public officials and citizens is the vision that a majority of Argentines have of our own society. This perception extends to the scope of the National Constitution and correlates with low confidence in state institutions. This is the picture of an anomic society".⁶²

And it is said further on: "This state of anomie is calling for urgent reform actions aimed at developing and rooting in Argentine society a true "culture of legality". However, we must be aware that it is not possible to advance along the path of legal reforms without the correlative of an adequate observance of the same, since this would produce in the population not only greater frustration but also the risk of aggravation of the per se and low levels of credibility and legitimacy of the main institutions. We are

⁶² Ob. Cit., p. 98. And it is expressed next: "These data show the great paradox that today characterizes Argentine society. On the one hand, a great demand for legality, a high appreciation of the Constitution and a demand for leaders capable of handling themselves in accordance with the law. But, on the other hand, a society that knows little about and does not comply with its Constitution, that mostly classifies itself as a transgressor, that instead of assuming the responsibility for this breach as its own, prefers to transfer it to the "others"..."The support for democracy has not been accompanied by a similar development in relation to the validity of a republican regime and the strengthening of the rule of law. On the contrary, far from having progressively consolidated a democratic republican regime, we have walked in the opposite direction. Its main attributes - citizen control of state power, balance of powers, transparency and publicity of public affairs - remain weak or absent. Nor have we achieved a strengthening of the Rule of Law, that is to say of "... the subordination of all power to the law, from the lowest to the highest level" (Norberto Bobbio). We note instead, in light of the survey data, that there is a lack of correspondence between laws and beliefs. Citizens do not believe in who makes the laws (congressmen), nor in who executes them (politicians and public officers) governors) nor in who interprets and applies them (justices); and, sometimes, it does not establish with too much precision who fits each of these functions". (Ob. cit., ps. 98/100).

therefore faced with a complex, deep problem that does not have and cannot have simple and specific answers. Its solution demands, on the contrary, a comprehensive, continuous and long-term strategy”.⁶³

Finally, we present the following **Proposals**⁶⁴: “From everything analyzed so far, it emerges that the priority objective is to achieve the full validity of the National Constitution and the laws, for the proper functioning of our republican institutions within the framework of the constitutional and democratic Rule of Law. This supposes the full validity of the rights, duties and guarantees of citizens and an adequate system of balances and controls between the powers. In this sense and without intending to make an exhaustive list, we allow ourselves to recommend the following actions:

1. Strengthen the actions of the National Congress and other legislative bodies, for the effective fulfillment of their functions of legislation and political control of the executive bodies. This means putting an end to emergency legislation and the abusive practices of Necessity and urgency Decrees and Delegated legislation.
2. Guarantee the effective independence of judges with respect to political powers and other pressure of interest groups and carry out a profound reform of judicial procedures.
3. Promote and deepen civic and democratic education at all levels of education. The great Austrian jurist Hans Kelsen cannot be forgotten when he argued that the first obligation of democracy was education for it. This imports the revision of the study plans at the different levels, both of the Ministry of Education of the Nation and of the Provinces and Municipalities.
4. Create a Commission in each House of Congress, as well as in the Provincial Legislatures and Deliberative Councils, to adequately monitor and control compliance with the laws and ordinances passed.
5. Ensure the effective implementation of the right of access to information to achieve not only a more transparent government but also a more participatory and informed society.
6. Advance in political reform, in aspects related to the electoral system, democratization, modernization and strengthening of political parties, with special attention to the financing of politics. Likewise, promote the formation and training of the leadership of political parties, with interdisciplinary studies on constitutional and political history, political science, constitutional law, state constitutional law, municipal law and administrative, among others. In this sense, article 38 of the National Constitution should be strictly complied with, which has provided for the allocation of funds to political parties for this purpose.

⁶³ Ob. Cit., p. 102.

⁶⁴ Ob. Cit., ps. 104/107.

7. Strengthen the full validity of freedom of the press and of expression. Obtain the support of the media, public and private, so that they carry out an educational campaign highlighting the importance of the Constitution, laws and institutions.

8. Create a Center of the National Constitution, for the conservation, dissemination and study of our Supreme Law, in the historic city of Santa Fé, which was the seat of our first Constituent Congress⁶⁵. A notable example in this regard is the Center for the Constitution of the United States, in the city of Philadelphia.

9. Require knowledge of the Constitution in the exams for jobs and public positions that are contested, as well as for the granting of Argentine citizenship.

10. Modify the study plans of the Faculties of Law to include the teaching of Provincial Public Law and Municipal Law, since it is essential to deepen the knowledge corresponding to the Provincial Constitutions and the Municipal Organic Charters”.

Then, we were able to carry out the **Second Constitutional Culture Survey**, which we directed together with Daniel Zovatto and Eduardo Fianza, in 2014 and published as a book by Eudeba, in 2016, with this main conclusion: Argentina, an anomic society.⁶⁶

In general, the results of the First Survey, carried out in 2004, where the intervening sociologist was Manuel Mora y Araujo, **have been repeated. Indeed, 80% of those interviewed consider that our country works most of the time outside the law; 83% that Argentines are disobedient and transgressive and 34% stated that they are willing to disobey the law if it is necessary for them.**

And in the ranking of the lawbreakers, politicians, police officers and public officials appeared again in first, second and third place. In the previous poll in fourth and fifth place were the judges and the rest of the people, and now it is reversed, since the judges improved by moving to fifth place.

In a previous article, we pointed out with Zovatto⁶⁷ that **there is a paradox, since on the one hand there is a high assessment of the Constitution, which reaches 91%, and the fact that respect for the law appears as an objective to be achieved, but on the other hand, there is a high level of ignorance of the National Supreme Law, 73%.** And this is greater for the Provincial Constitutions and the Autonomous City of Buenos Aires, with 87%, which rises to 94% of ignorance for the Municipal Organic Charter of the City of Córdoba.

⁶⁵ Fortunately, the Park of the Constitution in the City of Santa Fe is already in operation.

⁶⁶See Antonio María Hernández, Daniel Zovatto and Eduardo Fianza (Compiladores), “Segunda Encuesta de Cultura Constituconal. Argentina: una sociedad anómica” (Second Survey of Constitutional culture. Argentina: an anomic society”, Eudeba, Buenos Aires, 2016.

⁶⁷ Antonio María Hernández and Daniel Zovatto, “La paradoja de nuestra sociedad”, (The paradox of our society), La Nación Newspaper, Buenos Aires, 2015, April 5th.

Although the Argentines value and support democracy, there is a **high level of distrust in institutions** and, in particular, in political parties, unions, the police, Congress and the Judiciary.

In this sense, 63% maintain that there is no equality before the law and 85% disagreed with the statement that Judiciary judges people regardless of their wealth.

It must also be remembered what was mentioned above in point 3 **about the reasons why laws are violated and about the lack of agreement on values in our society**. Note also that the interviewees give a special responsibility in the **anomic behaviors** that we suffer, in the first place to the judicial system for its malfunction and almost in the same percentage, to the Argentine citizens themselves. Regarding the latter, it has been checked that the **most negative view of human behavior is seen in Greater Buenos Aires**. We wonder if this is not a direct consequence of this enormous demographic concentration – typical of the deficient Argentine territorial organization –, where the most serious problems of poverty, violence and social exclusion are observed.

We believe that the seriousness of the problem pointed out by these answers cannot be ignored, which points directly to profound cultural, ethical, institutional, psychological, social and educational issues that characterize the Argentine citizens individually and as a society.

The perception also reached the **lack of independence of the Judges**, with 60% for the lower Magistrates and 51% with respect to the Supreme Court of Justice.

We cannot fail to point out, in particular, the undoubted and peremptory demand in favor of a modification of the judicial system, since its incorrect functioning has prevented the fight against corruption -among other aspects-, in addition to facilitating something even more serious, which is impunity⁶⁸.

The time elapsed between the first and second survey shows that cultural changes require time and enormous effort. And for this reason, although elections and political changes have taken place between the second survey and the current moment, it is highly probable that the serious problems detected will continue.

The two Surveys show as main conclusions the weakness of the commitment of Argentine society to its Constitution and laws, a high perception of inequality before the law and a low-quality democracy aggravated by the pronounced lack of trust in institutions.⁶⁹

⁶⁸ See Antonio María Hernández and Diego Valadés, Directors, “La Constitución y el combate a la corrupción” (The Constitution and the fight against corruption), Institute of Legal Research of the National Autonomous University of Mexico, Mexico, 2022. This is an analysis of Latin American countries and Italy and Spain. For my part, I am the author of the Chapters on Corruption in Latin America and in Argentina.

⁶⁹ In reference to the culture of legality in the United States, Professor Tom Tyler states that “Americans are typically law-abiding people” in his book “Why people obey the law” (Yale University Press, 1990). It was the conclusion of a survey carried out in Chicago in 1984, referred to in our book “Studies of

We are facing a complex problem that requires a comprehensive and long-term strategy to develop and root a culture of legality.

6 The interdisciplinary as a method of constitutional law and the importance of civic and democratic education.

I have sustained and applied an interdisciplinary method for public law in its various disciplines, such as constitutional law, federalism, provincial constitutionalism, and municipal law⁷⁰. That is why I certainly agree with Professor Sajó's proposal to incorporate in the interdisciplinary vision what is linked to the constitutional emotions and sentiments of human behavior.⁷¹

Faced with the serious problems it is necessary to produce institutional and cultural changes based on the principles and values of the National Constitution, among other proposals that we have already made in the aforementioned books.

I insist on the **importance of civic and democratic education**, based on knowledge and dissemination of the National Constitution, as provided by the unfulfilled Law 25.863⁷². Once again we must remember **Sarmiento: "Above the Constitution as a board and below the school to learn to spell it"**.⁷³

And I advocate a profound change regarding our uses and customs with high doses of violence and corruption, for the purpose of elevating our political and constitutional culture.

In order to have **"active citizens"**, Norberto Bobbio postulated a **"call to values"**⁷⁴, pointing first to the ideal of **tolerance**. He said: "If today there is a threat to world peace, it comes once again from fanaticism, or else from the blind belief in the truth and in the force capable of imposing it. Needless to give examples: we have them before our

Comparative Federalism. Argentina, United States and Mexico", Rubinzal Culzoni, Buenos Aires, 2018, ps. 181/184 and the E-Book "Studies in comparative federalism. Argentina, The United States and Mexico", Cordoba University Press, Cordoba, 2019.

⁷⁰ See Antonio María Hernández, Director "Derecho Constitucional", La Ley, Buenos Aires, 2012, Chap. I, "Teoría Constitucional"; "Derecho Público Provincial", Antonio María Hernández and Guillermo Barrera Buteler, Coordinators, Abeledo Perrot, Buenos Aires, 2020, Chap. I, "Derecho Público Provincial" by Antonio María Hernández; "Federalismo y Constitucionalismo Provincial", Abeledo Perrot, Buenos Aires, 2009, Chap. III; Antonio María Hernández, "Derecho Municipal", UNAM, Mexico, 2003, Chap. I and "Studies in Comparative federalism. Argentina, United States and Mexico", op. cit. in its 3 editions.

⁷¹ Andrés Sajó wonders: Are political and legal scholarship and practices going to use the lessons emerging from behavioral sciences? Law is an interest-driven practical activity. It is not out of the question that interests will prevail in law in disregard of improved knowledge about emotions". .

⁷² Enacted in 2003 at the proposal of the Argentine Association of Constitutional Law, when it held the Presidency. In Art. 1, May 1st was established as the Day of the National Constitution and in Art. 2, the dissemination of the principles and values of the Constitution was ordered through the Federal Council of Education in all country schools.

⁷³ See Domingo Faustino Sarmiento, Recopilación sumaria que precede al Tomo VIII de sus Obras Completas, (Summary Recopilation that precedes Volume VIII of his Complete Works), Editorial Luz del Dia.

⁷⁴ Norberto Bobbio, "El futuro de la democracia" (The future of democracy), Plaza & Janes, Barcelona, 1985, p.. 48.

eyes”⁷⁵ Then he pointed to **nonviolence**, and wrote: “I have never forgotten the teaching of Karl Popper, according to which what essentially distinguishes a democratic government from a non-democratic one is the fact that only in the former can citizens get rid of their rulers without bloodshed. The much mocked formal rules of democracy have introduced, for the first time in history, coexistence techniques, whose purpose is to resolve social conflicts without resorting to violence. Only there are these rules respected, the adversary no longer an enemy (who must be destroyed), but an opponent, who tomorrow may take our place”.⁷⁶

The next proposal was the gradual renewal of society through the **free debate of the ideas and the change of mentalities and way of living**. And he commented: "Only democracy allows the formation and expansion of silent revolutions, as has happened in recent decades with the transformation of the relationship between the sexes, which is perhaps the greatest revolution of our times."⁷⁷

And finally, **the ideal of brotherhood** (the “fraternité” of the French Revolution). Bobbio affirmed: “A large part of history is made up of fratricidal struggles. In his Philosophy of History, Hegel defines history as an "immense slaughterhouse". Can we take away the reason? Nowhere in the world can the democratic regime endure without becoming a custom. But can it become a custom without recognition of the brotherhood that unites all men in a common destiny?”⁷⁸

Popular and democratic education could be accelerated by the examples provided by a leadership of great training together with ethical and republican commitment.

⁷⁵ Idem, p. 48.

⁷⁶ Idem, p. 48.

⁷⁷ Idem, p. 48/9.

⁷⁸ Idem, p. 49.