

THE NATION-STATE CONCEPT

IN THE CRISIS OF DEMOCRACY IN SPAIN

JOSÉ J. JIMÉNEZ SÁNCHEZ¹

Abstract: This paper addresses the fundamental reason for the crisis of democracy in Spain, which is closely linked to the most important problem that also faces Europe today. I refer to the consequences of continuing to justify different political practices through the use of the concept of the nation-State. These pages seek rather to analyze that concept to try to explain its ambivalence than to tell the story of its emergence and development. I then propose, through Hegel and especially against Fichte, to establish a new concept, able to avoid the shortcomings of the previous one, which would require us to understand differently the relationship between the two elements, State and nation, which compose it.

Keywords: Nation-State, Universality, Hegel.

Summary: I. INTRODUCTION; II. THE NATION-STATE CONCEPT; III. THE CONCEPT OF NATION; IV. THE CONCEPT OF STATE; V. CONCLUSION.

I. INTRODUCTION

Although we face many problems today, whether economic or political, the fact is that for the former a solution will be found sooner or later, while the latter pose more substantial difficulties. This is the reason why in this work we will focus on only one of these, the question that can be considered as the most important legal and political problem that democracy in Spain has to confront. It is directly interwoven with the use, the misuse, of the concept of the nation-State. It is true that this concept served to ground and settle modern European States. However, that same concept has allowed today a reverse path to be initiated, to the extent that new States claim to be based on it, the so-called Europe of the nations. Both paths, both the initial one of traditional nation-States, as well as the new one of the nations that are calling for a State of their own have the same philosophical and political basis: the nation-State concept.

¹ Department of Philosophy of Law, University of Granada, Spain (jimenezs@ugr.es).

It is desirable, therefore, to reflect on that concept, to the extent that both practices are justified by it. This will lead us to ask the reason for this ambiguity and the possibility of escaping from it. To do this we must deconstruct this concept and understand the mechanism of its working, which will enable us to emphasize that, from the moment that its two elements, State and nation, settled on a universality that responds in each case, whether nation or State, to different foundations. The use of both together is founded on a double universality that ends up being contradictory and very sensitive.

II. THE NATION-STATE CONCEPT

To properly understand the complexity of the nation-State concept, I think it would be wise to compare it with nitroglycerin, a powerful but very unstable explosive. This is why despite having a huge capacity to demolish, its use never became widespread. The nation-State concept also has an enormous capacity for destruction. It was used to blow up the late medieval order and build the modern world. It looks like nitroglycerin because its killing efficiency is enormous, but, like it, it seems very sensitive. Thus the same should have happened to the concept of the nation-State as happened with nitroglycerin; it should have stopped being used given its drawbacks. However, that has not happened, its use has not decreased, but on the contrary, the concept of nation-State continues to occupy a central place. In fact an important part of the major problems that Europe has experienced since the establishment of the Peace of Westphalia, have been related to the nature of the instability of the nation-State concept. Our own political life is governed by the imbalances that start from the crucial role that that concept plays in it.

Nitroglycerin stopped being used because new materials were found that ensured the same capacity, while avoiding its shortcomings, the derivatives of its instability. In the legal-political field, however, we have been unable to find a new concept that would have enabled us to replace the previous one. I think the reason for this failure is that we have not managed to analyse its components consistently. This would have allowed us

to understand it exactly and therefore be able to replace any of its elements or to alter its composition so that the same disadvantages would have been avoided.

In this paper I will not stop to highlight the great advantages of its use. We only need to recall what happened in European history for three centuries. Neither shall I dwell on the negative consequences of its use. In this case we do not even need to look backwards, it is enough take a closer or further look around us. The attempt to disrupt our democratic State, the Europe of States, and replace it for who knows how many, the Europe of nations, would be a sufficient sample. Here I am only concerned with the analysis of that concept in order to understand the reasons for its instability. If we do so, then it would be possible to replace it with a better designed concept to avoid the defects of the former. In short, we would be repeating in the legal-political sphere what happened with the replacement of nitroglycerin by dynamite.

In *The Essence and Value of Democracy*², Kelsen reflected on the need for all States to be built on a nation, that is, on the identity of language and culture among its members. He thus recounted the difficulties of his time, the collapse of the Austro-Hungarian Empire, and the foundations on which the legal-political order would have to be built to avoid those problems that ended up by destroying the Central European order. Kelsen supported his arguments on the ideas of Kant and Fichte, even though he did not go beyond them. To do that, he would have had to take into account the reflections of Hegel.

Kant wrote against Hobbes and his conception of the social contract. According to Kant, the social contract is the union of a group of individuals in order to form a society. To do so they established a civil constitution. Until here he does not differ from Hobbes, although he would do so when he maintained that

² H. Kelsen, *The Essence and Value of Democracy*, ed. by N. Urbinati and C. Invernizzi Accetti, trans. by B. Graf, Rowman and Littlefield Publishers, Lanham, Maryland, 2013 (1929).

"[That union...] is to be found in a society only insofar as it is in the civil condition, that is, constitutes a commonwealth"³

Thus, the civil constitution is a necessary step, but has to be given on something prior, the commonwealth, which he describes "as the maternal womb"⁴, and we can easily understand it as a commonwealth of language and culture. Fichte went more deeply into Kant's position in a certain way and Hegel would do precisely the opposite, because while for Fichte that social life is built on the commonwealth, subordinating the construction of the State to the former, in the case of Hegel it was the contrary. Fichte based his work on the primacy of the concept of nation, while Hegel did so on the State.

In his *Addresses to the German Nation*⁵, Fichte had argued that

"People and fatherland [...] as carriers and guarantors of earthly eternity and as something that can last forever here on earth, they are something that is above the State [...] they are above the social order"⁶

The consequences of such assertions are obvious. First, Fichte argues that "the love of the fatherland should govern the State itself"⁷, so that "the burning flame of superior love of fatherland that understands the nation as the wrapping of the eternal and to which the noble surrenders himself with joy and to which the not noble, that is only there for ["civic"] love ["to the constitution and laws"], must be surrendered himself likes it or not."⁸ Thus, Fichte differentiates between love of fatherland, a higher love, typical of one who is noble in character, and civic love, typical of one who does not possess

³ I. Kant, I. Kant, "On the common saying: That may be correct in theory, but it is of no use in practice" in Kant, *Practical Philosophy*, trans. and ed. by M. J. Gregor, gen. int. by A. Wood, Cambridge University Press, 1996 (1793), p. 290.

⁴ Kant, "On the common...", *op.cit.* p. 291.

⁵ J. G. Fichte, *Discursos a la nación alemana*, int. and trans. by M. J. Varela and L. A. Acosta, Tecnos, Madrid, 2002 (1807-1808).

⁶ Fichte, *Discursos...*, *op. cit.*, pág. 142

⁷ Fichte, *Discursos...*, *op. cit.*, pág. 144

⁸ Fichte, *Discursos...*, *op. cit.*, p. 145

that nobility, that is, love of the constitution and the laws, which is necessarily subjected to the first.

III. THE CONCEPT OF NATION

Against Fichte's position in which the nation plays a central role through its link to the eternal, Hegel argues that the universality of the nation does not exceed its immediacy, while the universality of the State does. The first is based on the common, which corresponds to a superficial universality,⁹ the second is appropriate of the general will, 'the will's rationality in and for itself', and its reality will take place in the State. In short, Hegel turns Fichte around. Now the State acquires a central and not merely instrumental role. To support this position, Hegel develops in the *Phenomenology of Spirit* a brief, but very complex argument which I shall now explain.

In relation to the concept of nation he says its universality, which is first and superficial, is built on the language [die Sprache]. This is an externalization of spirit as the spirit of the people that sheds its particularity. Thus the people cease to be aware of this, the particularity, at that, the spirit, to be aware of the universality of human existence, a universality that is reached in language.

The awareness that a particular spirit of the people acquires from the universality of human existence can only be achieved through unity, which dwells only in the house that language represents. Hegel speaks of the spirit of the people and of this spirit insofar as it becomes conscious of itself, which can only happen when unity is achieved by the particular spirits of the peoples, that is, when grouped in the unity that language entails, since the spirit of the people, if it is to become aware, has to do so in language. In other words, when the spirit of the people acquires its awareness, the particularity is exceeded in the unity of language, around which it becomes the essence of a specific people, which is necessarily universal, which is characteristic of all humanity.

⁹ Hegel, *El concepto de religión*, int. and trans by A. Guinzo, Fondo de Cultura Económica, México, 1981 (1821-1831), p. 120

It is true that Hegel has so far only used the concept of people [Volk] and spirit of the people [Geist des Volks and Volkgeist]. Moreover, the Spanish translation fits his requirements. However, the English translation handles the terms as nation, national spirit and spirit of the nation, which apparently is disrespectful, but I think in essence it is more accurate, because in this translation we can glimpse what Hegel himself is looking for and will reveal when he conceptualizes the nation as the result of the common undertaking of all, which is nothing but the form that the reality of a particular spirit of the people reaches insofar as it is sensed as the universal humanity, which is achieved through the universality of language.

It would only be necessary, for now, that to build that common undertaking around which all come together and constitute a nation, Hegel says it requires the formation of a "Gesamtvolk" and therefore a "Gesamthimmel". That is, this common work of which the nation consists, requires a rigorous unity, which claims the formation of a 'total', 'complete', people with a goal equally 'total', 'complete', implicit requirements in all the work that we want to consider as common. If Hegel had stayed here, he would have left his concept of nation blocked, it would have been simply limited to the immediacy of a single people, however complete it may have been imagined. However, Hegel has in mind at the outset that after his concept of nationhood and unity of the common undertaking that this concept represents there is the possibility of achieving a more complex universality than that which can be achieved only when the spirit of the people is sensed as universal humanity in its reality through the unity that language represents and that is identified by the construction of the common purpose as its aim. Thus, the universality of the nation is but a first universality. Hegel says it clearly:

"This universality to which Spirit in its existence attains, is, however, only this first universality which first issues from the individuality of the ethical sphere".¹⁰

¹⁰ Hegel, *Phenomenology of Spirit*, trans. by A. V. Miller, Oxford U. P., Oxford, 1977 (1807), p. 440.

Clearly, this first universality is not yet a State, but both realities, the reality of the nation and of the State, are embodied in the ethical sphere, because the ethical character of the real spirit of a people is based both on that -“the immediate trust of the individuals in their nation as a whole”-, as on this, the State, to the extent that individuals not merely express that confidence, but participate in "the decisions and actions of the government"¹¹, which necessarily requires a State structure. It seems as if two transformations occurred in succession. First, the one that happened in a group of individuals through the common task in an entire people, in which we already find an ethical spirit, that however, goes beyond that concept of people, since the ethical character of the spirit of the people is based on the trust of individuals toward the totality of their people, which at the same time goes beyond the immediacy represented by this first universality to the extent that ethical spirit gravitates, secondly, on the participation of all, regardless of how such participation is structured, in the acts and decisions of government. That is, the ethical spirit in which the first universality is based also is extended to a second universality, which is the appropriate of the government of all the people.

IV. THE CONCEPT OF STATE

Hegel does not say much about the concept of State in *Phenomenology*, although what he does say is fully relevant. He had spoken first of overcoming the particularity of a people in its universality, even it were a universality that was rooted in the immediacy of the unity represented by language. Now he builds a new duality. He considers that the concept of people can be approached from two perspectives, first, that "of the State, or *Demos*"¹² that is, of its universality and, secondly, "the individuality of the Family"¹³, that is, its particularity, leaving universality strictly as an appropriate feature of *demos*.

¹¹Hegel, *Phenomenology...*, *op. cit.*, p. 440.

¹²Hegel, *Phenomenology...*, *op. cit.*, p. 451.

¹³ Hegel, *Phenomenology...*, *op. cit.*, p. 451.

Hegel now plays with the ambivalence of the concept of people, which is understood as demos, but also as something singular, particular. The first grounds the idea of sovereignty, the second builds on the particular aspect of a specific people. He speaks of the demos as universal mass, opinion of itself, necessity and universality. These characteristics he opposes to those with which he characterizes the concept of people as particularity, such as its immediate existence, contingent and vulgar. When he thought of the concept of nation, he did it by distinguishing it for its universality, although immediate, of the particularity of a specific people; now he speaks of the people as demos, thus building a universality unlike that of the character of the nation, because it is a political universality, which the concept of sovereignty requires. Thus, Hegel establishes a central difference between demos and nation, for while all trace of immediacy has disappeared from the former, in the latter, the concept of nation, its universality remains subject to the immediate. This is what allows him to characterize, according to Dilthey, "the great modern States" like those that "embraced, like in its time the Roman Empire, peoples of different origin, language, religion and different cultures. The weight of all and the spirit and art of the State organization operated this connection, so that inequalities of culture and customs are a necessary product and, at the same time, an equally necessary condition for modern States to be able to subsist"¹⁴. In other words, the State needs the nation, but the nation needs the State and not merely a national State. This is precisely where the risk of such a concept is found, to the extent that one of its aspects predominates over the other. If the universality of the State prevails, we will fall into abstraction and the problems that this entails; if what prevails is the contingency and immediacy of the second, we will fall, as Hegel warned, into vulgarity.

In fact, Hegel thought of the concept of nation in the same way as Fichte, although the former considers it inadequate and tried to go beyond the *Addresses to the German Nation*. This leads him to raise two key issues in building a State, the problem of its grounding and that of its foundation. The first he would resolve, contrary to

¹⁴ W. Dilthey, *Hegel y el idealismo*, trans. and epilogue by E. Ímaz, FCE, Mexico, 1944 (1925), pos. 2519-2535.

Rousseau, by building a general will -"the will's rationality in and for itself"¹⁵- which differs from Rousseau's common will, in which "[t]he union of individuals within the State thus becomes a *contract*, which is accordingly based on their arbitrary will and opinions, and on their express consent given at their own discretion"¹⁶. Regarding the question of the foundation, Hegel argues, in agreement with Kant, about the complex institutionalization of a sovereign, to the extent that people have their voice in that of a constitutional monarch which ensures its unity. The State is erected on this.

To solve the first problem, that of the grounding, Hegel states, as we have seen, a difference between the common [Gemein] and the general [Allgemein]. This divergence had been much more clearly established in *The Constitution of Germany*, in which Hegel defended the difference between the need required for political power and the appropriate contingency of a social union of a people. Hence he maintained that

“[A] multitude of human beings can only be called a State if it is united for the common defence of the totality [Gesamtheit] of its property [... that is, for] a multitude to constitute a State, it is necessary to organize a common defence and political authority”¹⁷.

Hegel considers political authority "as pure State law,"¹⁸ which enables him to differentiate between what is necessary for political authority, which "has to [be] directly determined by it"¹⁹ and what is "merely necessary for the social union of a people "²⁰, which from the point of view of political authority is contingent. So he argues that the State, as a "*universal society*"²¹, leaves a "free hand to the general

¹⁵G. W. F. Hegel, *Elements of the Philosophy of Right*, ed. by A. W. Wood, trans. by H. B. Nisbet, Cambridge University Press, 1991 (1821), p. 277.

¹⁶ Hegel, *Elements...*, *op. cit.*, p. 277.

¹⁷ G. W. F. Hegel, *La Constitución de Alemania*, introduction, trans. and notes by D. Negro Pavón, Aguilar, Madrid, 1972 (1802), pp. 22-23.

¹⁸Hegel, *La Constitución...*, *op. cit.*, p. 29.

¹⁹ Hegel, *La Constitución...*, *op. cit.*, p.36.

²⁰ Hegel, *La Constitución...*, *op. cit.*, p.36.

²¹ G. W. F. Hegel, *Enciclopedia filosófica para los últimos cursos de bachillerato*, trans. by M. Jiménez Redondo, MuVIM, Valencia, 2007 (1808 ff.), p. 90.

subordinate action"²² and not in what is properly general. Thus he can defend the possibility that

"there is a very superficial connection, if any, between the members [of a State], in consideration of customs, education and language; therefore, the identity that formerly constituted the backbone of the union of a people, must be considered now as an accident whose characteristics do not prevent a mass from forming a political power"²³.

Thus, the State or the construction of political power is only possible if it is built on the universality appropriate to the demos, which is neither accidental nor contingent but goes beyond the particularity of any people, while at the same time allowing a variety of identities to coexist within that political power. Therefore he argues that in the modern State being identical in language, customs, education and religion is superfluous, because it has the ability to impose the same result

"through the spirit and art of political organization; with the result that inequalities of culture and customs is so much a necessary product as an essential prerequisite for the stability of modern States"²⁴.

In this way Hegel had solved the problem posed by Rousseau when building a political authority that goes beyond the immediacy of the common, at the same time he protects the very identities of that particularity. Nevertheless, the building will not be completed until its own closing is inserted in it. To do this will, he will follow Kant, as mentioned before, when discussing the need for the

"Political authority, as government, h[as] to concentrate on a central point [...] If the centre itself is safe, thanks to deep popular respect [...] then, a public authority can leave freely, without fear and without

²²Hegel, *La Constitución...*, *op. cit.*, p.36.

²³Hegel, *La Constitución...*, *op. cit.*, p. 27.

²⁴Hegel, *La Constitución...*, *op. cit.*, p. 27.

misgivings, to the care of systems and subordinate bodies, much of the relations arising in society, as well as its conservation according to the laws; so that each State, city, village, community, etc., can enjoy freedom doing and executing that which belongs to its level."²⁵

If we understand the central point not as the constitutional monarch, but rather as 'we the people'; if we understand its universality as necessary and not contingent, that is, the people as sovereign, we shall be able to solve our problem, if we truly understand that.

V. CONCLUSION

The conclusion to which we shall necessarily arrive is that of the justification of a democratic and multinational State, that is, a State with one sovereign, in our case, the people, articulated through its cultural and linguistic differences. This is the idea that Hegel has defended in *The Constitution of Germany* and in the *Phenomenology of Spirit*. With this he understands Kant in a radically different manner from how Fichte had done and solves the problem that we face, at least theoretically. It does not seem from a rational point of view that better principles can be raised than those that are established by those characteristics of a legal and political order appropriate to the constitutional State, which ensures not only the rights and freedoms of individuals; but also their own signs of identity through recognition of the rights to the preservation of their own culture and language. The discrepancy with Kelsen is clear, it is not that these differences in national character are those that have to ensure the construction of its own State, rather it is the State that guarantees the survival of such identities. In this way we avoid building a State attached to the immediacy of national characteristics and we could erect a State grounded on rational principles; therefore it would strengthen not only a first universality, based on naturalness, but a more complex universality appropriate to a State that goes beyond the immediacy of a certain culture and language.

²⁵ Hegel, *La Constitución...*, *op. cit.*, pp. 30-31.

However, we should not forget the saying that asserts "that may be correct in theory, but it is of no use in practice"²⁶. Attempts by peripheral nationalisms to transform "the State of the autonomies [...] into the autonomy of the States"²⁷ shows the problem to which I refer, that our democracy "will only be definitively consolidated the day on which the question of [those ...] nationalisms [...] is resolved"²⁸. True, we might think, following Kant²⁹, that if we are not able to apply that theory that seems the most rational of all, the difficulty does not lie in the practice but in the failure of the theory itself. Nevertheless, this does not seem to be the case. Hegel put it very well when he spoke of Napoleon's failure in Spain³⁰. His ideas were more advanced, more rational, but that does not mean that they could then be exploited, it is when they were applied that the failure was evident. Something similar could happen in our country now. Trying to use the theory of the multinational State in the present circumstances would certainly lead to the destruction of the democratic system. This is an idea that will require a long time to be assimilated and practiced, since if it is carried out at this time, every nation, every supposed nation would claim its own State, when the application of such a theory would only make sense from loyalty to a general will, 'the will's rationality in and for itself', which would embody the universal interest and not the irrational interests, because particular, of the different nations.

Thus, then, there has developed a whole theory, but it seems that we are incapable of putting it into practice. The United States of America was built on the brilliant invention of a sovereign, 'we the people', and the acceptance of thirteen States who assumed the dissolution of their own sovereignty in that of the new sovereign. In our case, we should have to understand it similarly, although not identically, since it is a

²⁶ Kant, "On the common...", *op. cit.*, p. 277.

²⁷ J. Semprún, *Federico Sánchez se despide de ustedes*, Tusquets, Barcelona, 2010 (1993), p. 122.

²⁸ Semprún, *Federico Sánchez...*, *op. cit.*, p. 132

²⁹ Kant had argued "everything in moral philosophy that is correct for theory must also hold for practice" ("On the common...", *op. cit.*, p. 289), that is, what was correct in theory, would also have to be so in practice. Therefore, "it was not the fault of theory if it was of little use in practice, but rather of there having been *not enough* theory, which the man in question should have learned from experience" (Kant, "On the common...", *op. cit.*, p. 279).

³⁰ "Napoleon, for example, tried to give the Spanish a constitution *a priori*, but the consequences were bad enough. For a constitution is not simply made: it is the work of centuries, the Idea and the Consciouness of the rational, insofar as that Consciouness has developed in a nation [Volk]" in Hegel, *Elements...*, *op. cit.*, addition, paragraph 274, pp. 312-313.

question of maintaining a single sovereign in a State with a national diversity understood as a multiplicity of identities. The problem is that we confuse identity with sovereignty, that is, we perceive the nations as sovereigns. Precisely, this is what can be glimpsed in the debate in which we find ourselves, although at times it is even worse, because we do not even understand the appropriate concept of sovereignty.

Nor should we again pursue the aim of being the test in resolving European problems. As almost always we should wait for Europe to be the solution, as these ideas take their place there. The economic crisis has brought to the surface the European evil, the resurgence of nationalisms with and without States. Claims for their own State, by some, as well as the claim of lost sovereignty -legislative, territorial, monetary and economic-, by others, show more than the crisis of the nation-State concept, their full consecration, for those and these try to assert it. The crisis is rather that of the concept of sovereignty, that is, the pre-eminence of the State, which shows the inability to articulate some practices which, just as Edmund Husserl called for in 1935, would lead to the construction of Europe as a "supra-nationality of an entirely new type"³¹ and therefore of a European sovereign.

In this situation it seems clear that it would not be very sensible to set out on a path in our country, that although correct from a theoretical point of view, we must recognize that at least in Europe it fails at the present time. Therefore rather than the realization of the theory we should, against Kant, call for caution and limit, according to Hegel, our desire for change to the mere reforms to the existing situation without attempting to achieve what might be correct in theory, but is now inapplicable in practice.

³¹Cited in Semprún, *Federico Sánchez...*, *op. cit.*, p. 237