EDITORIAL

BENEFICIO DE COMPETENCIA IN SOCIAL ETHICS

The liturgical severity of *ius civile* (Civil rights), inspired by the dictum *Dura Lex, sed lex,* reduces the powerful efficiency of their formulas, the inhumane authority of its objectivity in legal process of the personal judgment of the debtor, as the effect of the new and vibrant concept, presented in *ius honorarium* and *Hellenic aequitas* in good faith, fertilizes a judicial maxim of *summum ius, summum iniuria* as a as teleological assumption of legal science in the service of man in his relational and political dimension.

Enough to be true, the *Beneficium Competentiae,* which signifies in Medieval Latin as the accessibility to economic means of survival, and also embodied in the well-known proverb *"taxatio in id quod facere potest",* constitutes as one of the many echoes of the mystified characterization of the Roman legal individualism attributed to *ius quiritum,* originated from the authoritarianism of *pater* families in the context of universal equity, tradition, and religiosity; in the discretion, in the line of succession, as also in the absolute lordship of dominion in its full interpretation of *plena in re potestas.*

The sub-analysis figure, translates and grounds in Roman culture, the so-called social ethics, which, preceded by the so-called personal ethics, characteristic of traditional societies and, in turn, eclipsed somewhat by a modern overall design of the profile, in terms of sustainability, constitutes the trialism of an ethics of first, second and third generation, which intendeds to qualify man as good, just and sustainable, as it is reflected in the *Earth Charter.*

In an entirely unrelated to the phenomenology of sustainability, the Roman doctrine emphasizes the value of justice as the center of its legal ethical structure, as noted in apothegms contained in the writings of Ulpiano: *"iustitia est constant et perpetua voluntas ius suum cuique tribuendi"* (justice is the constant will to give each one his right); or the maximum prevention of the deterioration of the same right as formulated by Papiniano:

"non debet alteri per alterum, iciqua conditio, in ferri" (no one should make other´s condition worst). In this line of thought, while in different context, precepts like those of the *Lex Paetelia Papiria* (428 of Rome) by which personal responsibility of the defraudator (defaulting debtor) is replaced by the commitment of the debtor´s assets; as seen in many insights of pretorian legal system influenced by the Greek principle *epiqueya,* influenced the rise of the universal legal system proper to honorary rights of the *Beneficio de Competencia* as an evident manifestation of a social justice known and applied in the period before the Age of Enlightenment.

The text contained in the Digesto shows *ad pedem litteris*:

"In condemnationi personarum quae in id quod facere possunt damnantur, non totum quod habent extorquendum est, sed es ipsarium ratio habenda est, ne egeant" (In the condemnation of people, bound by the sentence of the judge as to what they can do; to them is not required all assets, but must take into account the condition of these, so they do not fall into poverty) ".

For its part, the Colombian Civil Code, Article 1684 (Chapter X of Title 14) reproduces in essence the principle *pretranscrito* when it says:

> "*Beneficio de Competencia* is granted to certain debtors to avoid being forced to pay more than best they can, leaving them therefore, as consequence, the essentials for a modest livelihood, according to their class and circumstances; and with the promise to return back when their fortune gets better."

Forgotten or unknown to scholars and laymen, the institute of *Beneficio de Competencia* outside the jurisprudence; excluded from scientific analysis of the program contents of Law Schools; disinherited, so to speak, of the economic universe that agonizes in debate and unconcealed crisis; it remains, however, untouched in private systems of Latin America waiting for a hermeneutic interpretation that diffuses a light beam to its indisputable importance.

As far as Colombia is related, this inability to comply mortgage housing loans, even with insufficient prospect of a payment in kind, demands a hermeneutical approach beyond of its original Roman interpretation. Semiotics of law cannot be reduced to the contemplation of a social mandate in the ungraspable universe of "heaven of concepts", as Von Ihering drew naked the logic of syntaxes, to a semantics drought in meaning, or a pragmatic proclamation coated with human realities for the sake of perfecting a sentential syllogism.

The agricultural credit, small industry, the family business, etc., become legitimate content so that their debtors will be special holders of the benefit examined.

Save–and the term is of Roman origin–means rescue the "other" from closed horizon of the minimum possibility and convene the person to an open dimension of personal fulfillment in the compound of an incarnation, freedom and transcendence, in the midst of the current rule of "sameness" as totalizing, egocentric and individualistic world.

It is time to print in the *Beneficio de Competencia* the teological meaning and scope of otherness as raison d'être of the rule of law inspired by human dignity, work and solidarity.

Rodrigo Vieira Puerta