

TANGO, A NEW METAPHOR FOR THE SEPARATION OF POWERS IN THE STATE

DIANA DĂNIȘOR*

Abstract. The article aims to give a new interpretation of the functioning of society starting from the tango metaphor. Within it, music represents the principle (the supreme norm), dance, the rendering into gestures of music, of the principle. The two protagonists of the dance (the man and the woman) are seen as the embodiment of the legislature and the executive. The judiciary is the dance teacher who is the main pawn in the tango logos, adapting the movements (*sermo*) to the music (*ratio*), while giving the framework for the performance of the two protagonists who improvise starting from the principles. Happiness results from the combination of music and dance, as ways of social organization. Against the background of a subtle harmony, the tango metaphor can account for the functioning of society, the relationship established between the tango partners, between them and music, between them and the dance teacher, but also between the protagonists and the public, shows how it works in society as a whole.

Keywords: *Tango Metaphor; Legislative Power; Executive Power; Judiciary; Supreme Norm*

Just as all cultures have myths, since people cannot live without them, “some of us even tending to live our lives according to one myth or another”¹, so too metaphors can guide future action, they are the prophets who determine their own fulfilment.² In the humanities in general, metaphors can create realities, especially social realities. Visible or configured metaphors give transparency to the social, through the constant play between manifest and secret by means of rational modes of visibility. But we also need the imagination to touch us, to get within us, through its quasi-phenomenological effects. A metaphor initiates us in the presence of the perceptible as a constitutive excess of the visible over itself and tries to name the world in the un-attributable moment of its appearance, because the phenomenal world is the place of an original metaphorizing.³ The

* Prof. Habil., PhD, University of Craiova, Romania; danisordiana@yahoo.ro.

¹ G. Lakoff, M. Johnson, *Les métaphores dans la vie quotidienne*, Éditions de Minuit, Paris, 1980.

² *Ibidem*.

³ R. Barbaras, *Le tournant de l'expérience. Recherches sur la philosophie de Merleau-Ponty*, Vrin, Paris, 1998.

primary function of metaphors is twofold: to communicate a new vision of objects and to reach the unknown through the known, postulating the availability of the receiver to novelty.⁴

A metaphor is used in law “to make the complex simple, by appealing to common sense when thinking about the structure of that matter”⁵ or “to increase the accessibility of a very abstract concept by referring to something structurally common and concrete relating to the experience or similarities inherent to the two”⁶.

Strictly speaking, many expressions do not have a legal meaning, but their metaphorical core gives them a great evocative force. They have lost their metaphorical value in their legal use, becoming very natural.⁷ We will further reveal some legal metaphors, without claiming to be exhaustive. The very word that designates the discipline of law, law, is a metaphor.⁸ In most languages, the notion of justice is linked to that of rectitude: a straight line is seen as a symbol of the good. In the extraordinary metaphor “the judge is the mouth of the law”, which belongs to Montesquieu, the judge is considered to be for the law what the mouth is for man, the organ that utters the words thought by him, which has no autonomy of thought, being limited to the enunciation of human ideas, in a close relationship of subordination to the brain that conceives them. This metaphor nurtured the reflection and analysis of the judge’s relationship with the law. The metaphor is splendid, but it is not at all in line with the realities of law (but with the revolutionary thinking whose fruit it was, that which established the relations between the judge and the law) and with the exact role which judges play in its creation. Focused on the judge’s position in relation to the legislature, this metaphor of Montesquieu continues to fuel debates over law enforcement, raising the question of the judge’s room for manoeuvre in the exercise of his duties. The metaphor of the judge creating a collective novel is due to Ronald Dworkin who, in order to explain the judge’s freedom in interpreting the law and, at the same time, the constraints to which he is subjected, compares the work of judges who have to give a sentence to the way of writing a collective novel. Dworkin was incited to create this metaphor in order to contradict Montesquieu’s “the judge is the mouth of the law” metaphor, with much emphasis on the judge’s autonomy from the law. Judges are compared to writers who should collaborate in writing a collective novel by drafting one chapter at a time. So, this metaphor is based on an analogy between law and literature: law is compared to a collective novel. “In this enterprise, a group of novelists write a novel, each in turn: each novelist in the chain interprets the chapters he has received in order to write a new

⁴ A. Licitra, «Métaphore et analogie. Cadre méthodologie et application au discours pédagogique en linguistique», in *Langage et société*, supplément au n°5, 1978, Rencontre annuelle. Documents préparatoires, pp. 28-29.

⁵ B. Berger, «Trial by Metaphor: Rhetoric, Innovation, and the Juridical Text», *Court Review, The Journal of the American Judges Association*, University of Nebraska, 2002.

⁶ P. Loughlan, «Pirates, Parasites, Reapers, Sowers, Fruits, Foxes... The Metaphors of Intellectual Property», *Sydney Law Review*, Vol. 28, 2006, p. 225.

⁷ G. Cornu, *Linguistique juridique*, Montchrestien, Paris, 2000.

⁸ See this metaphor in D. Dănișor, «Metafora dreptului», *Revista Dreptul*, no. 9/2018, pp. 73-90.

chapter, which then comes to add to what the next novelist receives and so on”⁹. The failure to adapt this metaphor to reality shows that “the aim of the metaphor thus conceived as a figure is rather to reveal than to demonstrate”¹⁰. Another metaphor which takes the way of pluralistic writing seriously is also literary, like the previous one. It is about the metaphor of rhapsody, the etymology of this word already suggesting the idea of progressive and pluralistic creation of the text. It is not a single text, but several, not the result of the work of a single bard, but of successive historical phases which give an account of a unique poetic tradition. Starting from this metaphor which advocates the cohabitation of the official model (hence of unity) and multiplicity¹¹, the legal work is seen as a network continuously woven by several authors, “with different margins of creativity, starting from a diffused multitude of contexts, through different procedures and techniques, but unified by the same unitary tension, that of writing – the *epic* of the community of affiliation” represented by “the values of the Constitution and of the International Charter of Human Rights”. Unlike the metaphor of the collective novel, the metaphor of rhapsody refers to the idea of a networked writing, with several vanishing points¹².

Like the metaphor of law, which comes from the language of mathematics, the metaphor of the pyramid comes from the field of geometry in which it is “the polyhedron with a polygonal base and triangular faces, which join in a common vertex”¹³. The paradox of the metaphor is that we cannot ignore it even in the simplest subjects, as it opens infinite horizons. Starting from this definition, Kelsen produces a generative metaphor in order to represent the hierarchy of the sources of law¹⁴. The sources of law are organized, according to him, in the form of a pyramid: any legal rule must respect the norm which is superior to it, thus forming an organized hierarchy. This metaphor of the pyramid can be used to establish any pyramid-shaped hierarchy with the base down and the top up. The fundamental principle of the theory of the pyramid of norms relies on the idea of conformity, which states that “the valid lower norm cannot be contrary to the norm which is immediately superior to it”¹⁵. This metaphorical image suggests the hierarchy and unity of the legal order under the authority of a fundamental norm: it is the process of empowerment by which a higher norm empowers a body to enact a norm that enables a body to enact... and the process of

⁹ R. Dworkin, *L'empire du droit*, 1986 (trad. française 1994), PUF, Paris, pp. 251-252.

¹⁰ R. Dworkin, « La chaîne du droit », in *Droit et société*, 1-1995, pp. 61-98.

¹¹ See G. Deleuze, F. Guattari, *Capitalisme et schizophrénie. Mille plateaux*, Ed. Minuit, Paris, 1980, p. 11 et seq. describing the model of the Tree based on binary logic, i.e. “on the law of One which becomes two, then two which becomes four...”.

¹² In the Renaissance, space was represented as a box in which objects and figures were placed, reducing their size as they approached the only vanishing point of the painting. For Cézanne, space was a vague element, where the uniqueness of the point of view was lost: perceptual acts are organized as a whole, the object being born out of the sum of these perceptual acts. Picasso's cubism will radicalize this conception of space. See, on this subject, *Storia dell'arte italiana*, under the guidance of C. Bertelli, G. Briganti, A. Giuliano, vol. 4, Mondadori, Milano, 1987, pp. 203-204 and 290-291.

¹³ DEX 2009.

¹⁴ H. Kelsen, *Théorie Pure du Droit*, trad. Ch. Eisenmann, Dalloz, Paris, 1962.

¹⁵ https://fr.wikipedia.org/wiki/Hans_Kelsen.

concretization by which a norm states in abstract terms an obligation to which a lower norm (which must conform to it) gives a more concrete content... In democratic countries, the idea of a hierarchy of norms is a fundamental principle¹⁶ which remains, however, “a false clear idea”¹⁷, sometimes “a guarantor of fundamental freedoms”, some other times “Kelsenian aporia”¹⁸, embracing a curious and unsuspected ambivalence, at the same time “strangely familiar to the jurist and extraordinarily complex”¹⁹. Even if this image of the pyramid is in contradiction with the empirical reality which has become more and more complex, we cannot deny the evocative force of the image. Ost and Van de Kerchove²⁰ start from the thesis according to which “a competing paradigm is gradually emerging from the crisis of the pyramid model, that of law in the network, without the disappearance of important residues from the first, which manages to further complicate the situation”²¹, intending to develop a science of law which agrees to face its challenges, suggesting a new theoretical framework capable of transposing the progressive movement which, schematically, goes from the pyramid to the “network”. “With the network, the state ceases to be the only home of sovereignty (...); the will of the legislature ceases to be accepted as a dogma (...); the boundaries between fact and law are blurred; the powers interact (judges become co-authors of the law and the sub delegations of the normative power, forbidden as a matter of principle, multiply); legal systems (and, more broadly, normative systems) are intertwined; the knowledge of law, which yesterday claimed its methodological purity (mono-disciplinarity) is today declined in an interdisciplinary way and results more from the contextualized experience (*learning process*) than from *a priori* axioms; justice, finally, which the pyramid model understood to reduce to the hierarchies of values set by law, is perceived today in terms of balances of interest and balances of values, as diverse as they are variable.”²² Built in opposition to the Kelsenian paradigm²³, the network is the result of the crisis of this model, seeking to fill the vacancy left by state deficiencies and transnational problems.

¹⁶ Ph. Malaurie, *Introduction à l'étude du droit*, Cujas, Paris, 1991, p. 160, cited by Ost F., Van de Kerchove M., *De la pyramide au réseau ? : pour une théorie dialectique du droit*, Bruxelles, Publications des Facultés universitaires Saint-Louis, 2002, p. 44.

¹⁷ P. Amselek, «Une fausse idée claire: la hiérarchie des normes juridiques», *RRJDP*, 1er avril 2007, n° 5, p. 562.

¹⁸ M. Lombard, «Régulation et hiérarchie des normes. Propos conclusifs», art. available at http://www.regulation.sciences-po.fr/fr/documentation/DER_2/Lombard2.pdf, site accessed 19.11.2019.

¹⁹ E. Millard, «La hiérarchie des normes. Une critique sur un fondement empiriste», in *Revus*, 21/2013, p. 3.

²⁰ Thus, professor Millard, who intends to oppose an empirical theory of the hierarchy of norms to normative theory, does not understand by the hierarchy of norms “the vulgate often used by jurists [...] who assimilate [it] to a pyramid of legal acts ordered in a coherent manner, because the inferior acts would be perfectly conformed, materially, to the superior acts”. Millard E., «La hiérarchie des normes, critique sur un fondement empiriste», *op. cit.*, p. 3.

²¹ F. Ost, M. Van de Kerchove, *De la pyramide au réseau? : pour une théorie dialectique du droit*, Bruxelles, 2002, p. 14.

²² *Ibidem*, p. 10.

²³ The Austrian author, in turn, implicitly rejects the idea of law in the network: law “is not a set of rules in force next to each other”. H. Kelsen, *Théorie pure du droit*, 2e éd., *op. cit.*, p. 266.

Noticing that the views on society which we have presented above do not account for its actual functioning, we have imagined another metaphor which, we believe, reveals the complex reality in which we live and, at the same time, can create realities. It is about the tango metaphor, a metaphor that we propose as a new view on society. In it, it is about intellectual intuition as a direct surprise, the unconscious of thought manifested in the act of metaphorizing being a fact, not a creation of human individuality. Wisdom is intellectual intuition, the process of metaphorizing succeeding in unifying the real with the intellect, the latter, intuitive, becoming all that it is. But intellectual intuition is instantaneous, it does not occur in time, as in the case of metaphors we are confronted with a paradox: it is given by intellectual intuition, but by intuition we know, but we do not get to know, by reasoning we get to know, but we do not know. A metaphor manages to unify the two ways, making us know what we have got to know and get to know what we know, because in it being and thinking is one and the same thing. Through metaphors, man discovers the divine in him, having direct access to the thinking that thinks the thinking. What is attempted to obtain through this demonstration, the metaphor, as intellectual intuition, is perceived directly, because in its case the surprise is an occurrence, and vice versa. This will only be possible by going beyond the rational and by emphasizing the intuitive-noetic, the intuition being responsible for creativity. Metaphors appear spontaneously, as revelations that underlie all rational justification.

History and, implicitly, politics must have a logical foundation. It is about human logic connected to the universal *Logos*, which is *ratio* (principle) and *sermo* (word), but which human logic captured only on one of its sides, which led to a failure in the political organization of society.²⁴ We will try to show how the tango metaphor can give an account of the current functioning of society, combining music and dance and constituting, in our opinion, a new reading grid for the functioning of powers in the state. Music represents the principle (*ratio*, the supreme norm, the constitution), dance represents *sermo*, not the spoken word, but the rendering into gestures of the principle, of music. The dance is performed by the two protagonists, the man and the woman, seen as the embodiment of the legislature and the executive. But in addition to these, dance also involves the teacher, the embodiment of the judge, of the judiciary. He is the main pawn in the tango logos, adapting movements (*sermo*) to music (*ratio*), while giving the framework in which the two protagonists perform and improvise starting from principles. The combination of music and dance results in happiness, the absolute good, felt by musicians, dancers, teachers, and the public. The teacher does not participate in the dance, but guides, directs, sanctions. Music establishes the principles, organizes, sets the rhythm. During the dance, the two bodies are no longer separated, but express concern for each other, expressing being-together-with-the-other²⁵. In tango, as a metaphor for society, everything is trust. If the man (the legislature) knows the steps, the woman (the executive)

²⁴ Ghe. Dănișor, *Însingurare. O filosofie despre istoria eșuată a umanității*, Universul Juridic Publishing House, Bucharest, Simbol Publishing House, Craiova, 2019.

²⁵ *Ibidem*.

can dance with her eyes closed, the one who sanctions, the teacher (the judiciary), being there, present at least in the minds of the dancers, and the music (principles) laying the foundations. That is all. The woman is carried away by the movement, she can abandon herself to her partner. She must, on the other hand, recognize whether the orders given by the man are in accordance with her position. And if the order is not good, if it does not consider her presence correctly, she can and must remain immobile, not respond. Sometimes the woman, out of a desire for domination, can consider herself a man, trying to get ahead of the movements, movements which normally are the man's initiative, a fact which places him in the position of having to validate a choreography that would no longer be his. But everything has to do with subtlety, in tango everything has to be done subtly, as in society.

It is known from Plato that music and dance were ways of social organization. Thinking like this, we can say that they are manifestations of rhythm and, implicitly, of universal harmony. Therefore, we suggest that the tango metaphor can give an account of the political organization of the social, by its rhythm and by establishing the relationship with the other against the background of a subtle harmony. The relationship between the tango partners, between a man and a woman, in a unity of differences, can be compared to the relationship between the legislature and the executive in their mission to form a whole. The supervision of the observance of rules, of rhythm, of figures is the responsibility of the third instance, the tango teacher, the embodiment of the judiciary.

According to Schopenhauer, "music never expresses the phenomenon, but only the intimate essence of the phenomenon", because only together with the words, in our case the gestures of the body, do we possess the language of the phenomenon. Music, as a principle, is the only art that is spontaneous. If the others *are offered* to us, it *is* in us. So, the principles are in us, they just need to be discovered. Music is more than an art, Plato felt it very well when he wanted to base the state on music, because, for humanity, it is the ordering principle. In tango, music can only be presented in the form of dance, the two forming a whole.²⁶

Tango appears as a complex phenomenon intimately related to other genres and other various modes of expression. It involves a combination of body movements, gestures, exclamations with strong musical consonance. In tango, dance and music create a syncretic existence. In this case, it is not about autonomous and self-sufficient artistic genres, but about fundamental modes of expression, each contributing to the definition of the other. What unites dance, as a body movement organized in space, and music, as sounds organized in time, is rhythm, the "order of motion", according to Plato²⁷. So, thanks to rhythm, these essential artistic phenomena can exist, in the case of tango, and can establish exchanges, in a syncretism deeply rooted in the history of culture.

²⁶ A. Appia, *Oeuvres complètes*, tome V, Ed. L'âge de l'homme, Lausanne, 1921-1928, pp. 137-138.

²⁷ Ghe. Ciobanu, «Înrudirea dintre ritmul dansurilor și al colindelor» (The relationship between the rhythm of dances and carols), in *Studii de etnomuzicologie și bizantinologie* (Ethnomusicology and Byzantinology Studies), vol. II, Editura Muzicală Publishing House, Bucharest, 1979, pp. 64-94.

In the case of tango, improvisation plays an essential role, having a double determination: one, situated at the level of the “word”, relates to the dancer’s competence, to his capacities of execution and to his psychosomatic peculiarities; the other, situated at the level of “language”, refers to the vocabulary of the movement and the rules of composition which are fixed by tradition and which facilitate communication within a given dance culture. The relationship between tango music and dance, between *ratio* and *sermo*, serves, on the one hand, to stimulate individualization, instituting, on the other hand, order and rules within improvisation. In the case of tango, as a metaphor for society, the relationship between music and dance is, essentially, a derivative of the interaction between musician and dancers, underpinned by a system of communication through signs and codes. It is based on common (aesthetic) values, on identical (cultural) norms, on a shared experience and long practice²⁸.

Why have we chosen tango as a manifestation of dance? Because where the waltz staged the frenzy of the meeting in a stunning performance, the tango places the man (the legislature) and the woman (the executive) in a duel oscillating between slowness and speed, the couple becoming majestic by the force of restraint, consciousness being the valued one, not the indulgence of the couple in voluptuousness.

The connection between principles and gestures is ensured by the sociality specific to the ball and by a socially shared culture of dance. Within the two powers, the legislative and the executive, the tango dance has the singular status of mediator of the meeting. This “gender” confrontation is carried out according to a “dramaturgical discipline”²⁹ which is based on great self-control. This concerns self-control and the control of feelings amplified by the technicality required in order to perform on the dance floor, body contact being paramount, ensuring, during the dance, the primacy of bodies as sign and language. It does not concern dialogue, but contact, the one that precedes the verbal dialogue, the contact being a raw dialogue of the bodies, released by the mechanism constructed by language. Relationships are suddenly established, victims of the frenzy created by this short circuit with the other, in perfect harmony, as a territory of the meeting and as an achievement of understanding. It concerns the sociality of the ball in which dancers and spectators, young and old, men and women, mingle in the whirlpool of dance and music, both in harmony, a meeting place between sexes. Tango, music and dance, values collectivities, the being-together, as an instrument of creating a social connection and as a vector of concord, which would produce sociality through a cultural and social action.

The ethics of tango presuppose conviviality, exchange, meetings, travels, no longer the ethics of competition, as in the case of sports dance, as happens in the case of the strict separation of powers. It is a supple separation, born of the tango mythology, which insists on the “popular” aspects, both of the characters and

²⁸ A. Giurchescu, «Le danseur et le musicien, une connivence nécessaire», *Cahiers d'ethnomusicologie*, accessed 1 May 2019, <http://journals.openedition.org/ethnomusicologie/99>.

²⁹ E. Goffmann, *La mise en scène de la vie quotidienne. La présentation de soi*, Editions de Minuit, Paris, 1973.

themes, as well as of the territories, tangible components of this reconstruction³⁰. Dance leads us to the discovery of music³¹, of principles, the musical part of tango thus becoming an object of investigation. There are two types of principles. Some, stable and immutable, in which the rhythmic and melodic formulas are clearly stated, the tango polyphony being practically always supported by the rhythmic overlap that includes a regular formula, which serves as the basic pulsation and forms the backbone of the work. The rhythmic, melodic and, less frequently, harmonic variants are grafted on this pulsation which punctuates the harmonic construction, but without parasitizing the initial basic construction. In tango, dance, you need a partner with whom you get along well, and the couple needs to adapt to music. Dancers listen according to what they have to do as dancers. But tango is not always played for dancers, and dancers do not always listen to music, some of them not understanding anything they are listening to. Sometimes they only listen to what resonates in them. And what can resonate in them if not a great pleasure, the pleasure to dance, to be with someone else in the dance. And the music is here right now, at present. Music and dance form a whole, tango being like the perfume of an old poem – a perfume, a colour and a music that come to recall moments.

More than other dances, tango is a metaphor for love and sex. Love, because it animates the meeting, fusion, separation, being the desire and pleasure to perform in two. The dancers have to make one body, a single feeling, while still remaining distinct bodies. It is a posture that requires you to stay face to face, the relationship with the other being based on a distribution of roles (active-passive/passive-active) and on the indispensable meeting of desires. Music and dance are a space, a territory in which, at the same time an inseparable couple and enemy brothers, the two powers look for each other, reveal themselves through feeling and experiencing sensuality and desire. Tango is a discourse of sex, a non-verbal discourse, at the same time socially staged and artistically assumed³².

Tango involves two bodies, side by side, two characters, sometimes unknown. In addition to the body proximity which seems to be the key to the emotion felt during the dance, along with the pleasure of dancing, there is also that of pleasure, the sensual and/or sexual emotion, which is related to seduction³³. Through this tango metaphor we try to transcend the conception of Western societies about the body “as an enclosure of the subject, the place of his limit, of his difference, of his freedom”³⁴. By overcoming the limits of corporality through

³⁰ Ch. Apprill, E. Dorier-Apprill, «Espaces et lieux du tango, la géographie d'une danse entre mythe et réalité», in *Le voyage inachevé*, Orstom Editions, Paris, 1998, pp. 583-590.

³¹ “Orquesta típica or the typical orchestra is the name of the classical Argentine tango band; it is traditionally a sextuor consisting of two bandoneons, two violins, a piano and a double bass.” – P. Monette, in R. Pelinski (dir.), *Tango nomade*, Triptyque, Montréal, 1995, p. 418.

³² Ch. Apprill, «Le tango, une «musique à danser» à l'épreuve de la reconstruction du bal», *Civilisations*, accessed 30 April 2019, <http://journals.openedition.org/civilisations/548>.

³³ Ch. Apprill, *Le tango argentin en France*, Economica (coll. Anthropologie de la danse), Paris, 1998, p. 85.

³⁴ D. Le Breton, *Anthropologie du corps et modernité*, 7ème édition, PUF (coll. Quadrige), Paris, 2013 (1990), p. 20.

this type of sensations which are difficult to verbalize, tango is “a sad thought that dances” to a “sad and nostalgic music”³⁵.

In the case of tango, it is about a symbiosis between music and dance, about a calm and united society around an intergenerational social dance. This dance is related to the search for oneself and the other³⁶, the relationship with the other helping to express what you feel in yourself, a much nobler and less superficial goal, which operates a certain hierarchy between art and fun. The imaginary of the ball, creator of social ties and space for conviviality, eliminates the modern individualism responsible for the self-reflection that made social solidarity disappear, tango being the one that reclassifies relations leading to the strengthening of social cohesion³⁷. As a dance, tango is extremely complex and codified, like the relations between powers (the legislative and the executive), but the vision of the dancing couple must show a subjugating harmony between the roles of the man and the woman who, ultimately, must form a single couple, even if consisting of two distinct bodies evolving into a dissymmetrical mobility and posture³⁸. It is about the improvised character of dance, which allows those who practice it to dance with an unknown person, provided that they know the basic structure. As in most couple dances, the man guides and the woman follows, the man being the one who gives the woman the intention to move. But women’s body technicality has developed, with men’s guidance becoming less directive and subtler, gentler.

Music, the Embodiment of Ratio

Music is a privileged support for forms of collective engagement which are often part of a resistance to cultural and/or political domination³⁹. Music, as a total social fact, maintains complex relationships with the social universe. It occupies a position which has become central to the elements structuring our perception of the world. It relates to the need for a radical change in the understanding of temporality⁴⁰. Plato is the one who asserts the need to use music for the purpose of political unity and the formation of the citizen, in relation to his metaphysical and aesthetic conceptions of beauty. In the Middle Ages, the ecclesiastical power tried to organize music for the purpose of education in the faith, and in the Renaissance, the Italian courts witnessed the development of a musical language whose aim was to justify the political functioning of states. More recent attempts by totalitarian states to discipline musical activity clearly indicate that music is given the power to assume the stakes of power⁴¹.

³⁵ H. Salas, *Le tango*, Arles: Actes Sud, 2004 (translated from Spanish by Annie Morvan, *El tango*, Editorial Planeta, Argentina, 1986), p. 51.

³⁶ Ch. Apprill, *Sociologie des danses de couple. Une pratique entre résurgence et folklorisation*, Paris, L’Harmattan, coll. «Logiques sociales», 2006.

³⁷ Ch. Apprill, *Le tango argentin en France*, op. cit.

³⁸ Ch. Apprill, E. Dorier-Apprill, F. Rodriguez Moreno, «Les paradoxes du tango», in E. Dorier-Apprill (dir.), *Danses latines: le désir des continents*, Autrement, n° 207, 2007, p. 173.

³⁹ A. Darré, *Prélude. Pratiques musicales et enjeux de pouvoir*, Presses universitaires de Rennes, 1996, <http://www.openedition.org/6540>, accessed 1 May 2019.

⁴⁰ J.-J. Rousseau, «Écrits sur la musique», *Essai sur l’origine des langues*, Paris, Stock, 1979, p. 249.

⁴¹ S. Solveig, *Musique du pouvoir, musique au pouvoir : l’Opéra de Paris sous l’Ancien Régime*, 2010, accessed 2 May 2019, <https://halshs.archives-ouvertes.fr/halshs-00451749>.

There are many clichés according to which tango is dance music, which expresses the implicit dominance of music over dance⁴². Dance needs music, while music may lack dance, making music belong to the “art world” and dance to “social practices”. Like the music of tango, a constitution can be described as a text whose vocation is to give society its own legal framework, to frame the power or political tensions which cross it, and can also be considered a support aimed at establishing the entire political body, the text founding the establishment of society in a political body. If the constitutional technique is mastered, the power will be framed by law, man not remaining unarmed before the absolutism of power, because freedom – a natural condition of man and a primordial value within the City – can be built. A Charter of freedom, the Constitution cannot be politically neutral, its axiological goal being to institute freedom, an axiology which translates the thinking of the constitution as a political order, it “constitutes a political community”⁴³. As a “primary principle of political unity”⁴⁴, a constitution establishes the society in the legal form of the state, as political order. As in the case of tango, the constitution (music) is not intended to enclose in law a power thought to be external to society, but to give a legal framework to public powers (legislative, executive and judicial powers – dance partners and teacher) consubstantial to society which has to be able to decide for itself. “The constitution is not just a text, but a complex of political, social, moral, psychological, etc. relations.”⁴⁵ which allows the protagonists to conform to the rules dictated by the game of the moving forces, conflicting interests, tireless and contradictory interpretations⁴⁶.

Dance, the Embodiment of Sermo

Dance is the art of expressing thoughts, actions, feelings, passions, by means of steps, jumps, rhythmic movements, attitudes, gestures, and looks⁴⁷. The human species is characterized by the ability to dance. As dance is an art and as there is no art without principles, dance is subject to the laws of the number, cadence, measure, and the steps of which it is composed must be determined,

⁴² Ch. Apprill, «Le tango, une «musique à danser» à l'épreuve de la reconstruction du bal», *Civilisations* accessed 30 April 2019, <http://journals.openedition.org/civilisations/548>.

⁴³ According to the formula of U. Preuß («Der Begriff der Verfassung und ihrer Beziehung zur Politik», in U. Preuß (Hg.), *Zum Begriff der Verfassung. Die Ordnung des Politischen*, Fisher, 1994, p. 9), cited by O. Beaud in «La Constitution chez Montesquieu. Contribution à l'étude des rapports entre constitution et constitutionnalisme», in D. Murswiek, U. Storot, H. A. Wolff (Hrsg), *Staat. Souveränität. Verfassung. Festschrift für Helmut Quaritsch zum 70. Geburtstag*, Duncker & Humblot, Berlin, 2000, p. 412.

⁴⁴ M. Fioravanti, «Costituzione e stato di diritto», *Filosofia politica*, n° 2, décembre 1991, pp. 324-350, cited by O. Beaud, «Constitution et constitutionnalisme», in P. Raynaud, S. Rials (dir.), *Dictionnaire de philosophie politique*, 3e éd., PUF, Paris, 2003, p. 118.

⁴⁵ S. Rials, *Préface* à D. Baranger, *Parlementarisme des origines. Essai sur les conditions de formation d'un exécutif responsable en Angleterre des années 1740 au début de l'âge victorien*, PUF, coll. Léviathan, Paris, 1999, p. 10.

⁴⁶ *Ibidem*.

⁴⁷ *Chanteurs, musiciens et danseurs*, anonymous work published in Bibliothèque des curiosités, Paris, P. Lebigre-Duquesne, in 1868 (153 pages). The anonymous author constructs his text by confronting the definition of what dance should be and what it really is in his time, then opting for a moral attitude.

noticeable. Attitudes, allures must know how to conform to the song animating the dance and the state of the characters they represent. Dance must express something, it must have a significance⁴⁸. Tango is a dance in which a man and a woman have clearly differentiated roles characterized by the possibility, for one, of stopping, when the other creates a movement, and vice versa.

If tango is improvisation, it is a break from previous dances⁴⁹. Contrary to popular belief, in tango we are not dealing with a two-way relationship, but with a three-way relationship, like the relationship between powers in a state: even if it is practiced in two (the legislature and the executive), it is practiced in the presence of a third party (the judiciary), its look being profoundly different from that which the dancers have at themselves. Until the tango, all dances were part of the reproduction of a temporal object, in the case of tango the reproduction is replaced by improvisation⁵⁰.

It is obvious that the dancing of tango is eminently body-related. What happens during the dance, through physical contact and the search for connection with the other, pertains to the search for an individual bodily well-being, like a state of trance. With Mauss, body techniques are considered a social fact, not a natural one. Beyond the influence of Cartesianism in the sciences, Thomas d'Ansembourg⁵¹ explains the problems of communication between individuals through a double rift, inherited from Descartes, between spirit and "heart", the seat of emotions, and between spirit and physical needs. Many current bodily practices seek to re-establish the "broken connection" between man and his own body through the re-learning of certain bodily sensations, tango being part of these practices. "Individualization has as a logical consequence the dissolution of collective landmarks. Anxiety increases as the landmarks become less visible and compelling. This explains why the entire society has become a huge machine for making the landmarks of the just and the true, of the good, of normality."⁵² Although the dualistic conception is still present, unity is the goal to be achieved, a unity which never existed in Western societies, to be honest. This unity could be achieved by abandoning the spirit, so as to let yourself be carried away by the body. The simple "pleasure of dancing", evoked by tango dancers, reveals this relationship with the body, the logic of abandoning the body being the infinite search for well-being⁵³. What is reflected here is the search for freedom, a desire for freedom and emancipation of the values of modern society and a "liberation

⁴⁸ *Ibidem*, p. 67.

⁴⁹ R. Hess, «De la valse au tango, une relation à trois. Le lieu d'où l'on cause», in *L'Homme et la société*, n° 127-128, 1998 (it is part of the thematic issue *Cinéma engagé, cinéma enragé*), p. 151.

⁵⁰ *Ibidem*.

⁵¹ Th. d'Ansembourg, *Cessez d'être gentils, soyez vrai ! Être avec les autres en restant soi-même*, Les Eds. De l'Homme, Montréal, 2001.

⁵² J.-C. Kaufmann, «Le corps dans tous ses états: corps visible, corps sensible, corps secret», in C. Bromberger, P. Duret, J.-C. Kaufmann, D. Le Breton, F. De Singly, G. Vigarello, *Un corps pour soi*, PUF, Paris, 2005.

⁵³ However, I am not the only one who draws a parallel between tango and this type of bodily practice. Although he does not study it as such, C. Apprill concludes in his paper *Le tango argentin en France*: "imbued with an exoticism that invites you to travel, tango is, in a certain way, akin to oriental bodily practices (shiatsu, yoga, tai chi etc.)".

of the body” through an abandonment of the spirit for the benefit of the body, in which nature embodied regains its rights over the culture symbolized by spirit, although the body is an eminently cultural construction. Tango proposes a relationship with the other, considering the body not a border of the individual, but a means of connecting to the other, by forming *a* dancing body, united, seen as a bodily practice in search of a double body unity corresponding to the double constitutive fracture⁵⁴ of the modern conception of the body: the unity between the subject and his own body and the unity between the subject and the other.

The novelty consists in upsetting the bodily habits of individuals who now have to face a new bodily socialization corresponding to an initiatory journey in search of well-being, but also at the couple level, by trying to put aside individualism in order to connect with the other, search which can only end in the relationship with the other. Tango learning aims to move from the dualistic conception of the body (set apart from the other and set apart from the self) to the unitary conception (unity in oneself and with the other), leading to personal well-being which could remain only an ideal because of the centuries in which we dualistically referred to the body.

The role of the woman (the executive) in this dance has evolved with social changes: the guidance is no longer as directive as before, the man (the legislature) must also listen to the woman, otherwise he is rejected by the other dancers, men and women, because “the process of stigmatization is more violent in the social microcosms in which bodies deliberately show up, where each participant appears simultaneously as a voyeur and an exhibitionist”⁵⁵. During the ball, tango is danced with spectators, the people on the dance floor and the people around it, which involves an important game of glances and remarks. Vision, the first sense of modernity, as a vector of judgment of the other, finds its place here⁵⁶, tango, as a subversive practice which challenges the fundamental norms of society (moving away from the principle of fidelity and productivity in the couple), finding its limit in the eyes of others.

The individual must now overcome the double fracture inherited from the Renaissance paradigm, seeking unity with the other, by overcoming the vision of his own body as a boundary between himself and the others, and unity within himself by reducing the distance between the individual and his own body through seeking the sense of harmony and the state of well-being. The alter ego body can reach unity within himself through the dance of tango which allows to achieve an excellence bringing a better state, a state which can only be achieved in the relationship with the other. The meeting is difficult, because, starting with the Renaissance, the body has been seen as a frontier of the individual, the relationship to the body being internalized. But this does not mean that it is impossible, the practice of tango inviting the participants to detach from the

⁵⁴ We remove here the third distinction, that between man and the cosmos, because it does not seem to apply to the case of the Argentine tango.

⁵⁵ A. Meidani, *Les fabriques du corps*, Presses Universitaires du Mirail, Toulouse, 2007.

⁵⁶ Smell, involved due to the proximity of the bodies, does not call into question the norm which considers any body odor as bad.

modern dualistic vision of the body (me and the others, me and my own body), and the subversive aspect can be relativized by analysing the implications of the body within the group. “The identity, not of practices, but of their function within a given social and ideological field, leads G. Vigarello to finally wonder what exactly these apparent liberations hide. For him, indeed, the long history of body exercises is not at all that of a march towards the disappearance of constraints, but – which is not the same thing – of a progressive internalization and abstraction of adaptations and supervisions. The liberating techniques of the present or those given as such must therefore be questioned in this regard as a new, subtler, but perhaps no less effective, way of controlling bodies.”⁵⁷

Starting from here, we can understand that “the legal independence of Parliament and Government, which must mutually ensure the possibility of preventing each other, implies that they are in a complete dependence, the factual freedom enjoyed by the two bodies does not consist in the freedom to fulfil their own will, i.e. to enact and implement the legal norms that they like, but to propose or agree to or refuse the decisions proposed to them”⁵⁸.

As in the case of tango, state functions are not articulated with each other according to a relationship of validity unless they belong to a certain structure of command authority: if the man is the one who leads, in the tango dance, in society, too, the legislative function is superior to the executive function, because it implements a command force that embodies the “general will”⁵⁹, while the partner (the executive) does nothing but execute “this general will”⁶⁰, she is not the one who deliberates, but the one who acts⁶¹. From a legal point of view, the hierarchy of bodies always follows that of the functions whose distribution is made according to the precept that power stops power by sharing it among the many authorities, depending on the political or socio-historical context of a given society at a given moment. The rule of assignment of functions is completely political: the bodies do not have the same degree of legitimacy; they cannot claim to exercise all functions.

According to the tango model, freedom is not “independence”, because you can’t do whatever you want⁶², the freedom of one finding its limit in the freedom of the other, everyone must be able to express themselves. The opposition between the two powers will be the source and salvation of freedom⁶³ by stopping each other and by creating favourable conditions for deliberation, each having to be placed in a position to use their freedom by participating in the exercise of authority and having an interest in defending this freedom.

⁵⁷ G. Vigarello, «Le corps redressé présenté par Roger Chartier», *Le Débat*, Gallimard, n° 2, 1980, p. 155.

⁵⁸ Ch. Eisenmann, «L’Esprit des lois et la séparation des pouvoirs», in *Mélanges R. Carré de Malberg*, E. Duchemin-Topos Verlag, Paris, 1993, p. 25.

⁵⁹ Montesquieu, *De l’Esprit des lois*, Gallimard, coll. La Pléiade, Paris, 1951, livre XI, chapitre 6, p. 587.

⁶⁰ *Ibidem*.

⁶¹ *Ibidem*, p. 590.

⁶² *Ibidem*, livre XI, chapitre 3, p. 586.

⁶³ B. Manin (ed.), «Montesquieu et la politique moderne», in *Cahiers de Philosophie Politique*, Editions Ousia, Bruxelles, 1985, p. 219.

An effective vector for the imposition of freedom may be the law, because, so that freedom can exist, it must have a legal status, the confrontation of social interests must be analysed as autonomy. But the existence of society commands intersubjectivity, the consideration of others, because the assertion of an autonomous individual will could not comply with the tango and would generate a war of each against all and of all against all⁶⁴. Freedom therefore consists in “being able to do what you have to do and not being forced to do what you don’t have to want”⁶⁵. There must be, as in the case of tango, a balance, so that the will of each can be expressed without threatening the will of the other. The condition of freedom is to find a middle state of balance, freedom being “the right to do what the laws allow”⁶⁶.

There are, as in the case of tango, two competing models of power organization: functional specialization of bodies, which perform only one function, and functional collaboration of bodies, separate, which outlaws any means of pressure that might question the organic integrity of each of the state authorities. In the first case, dance is almost impossible, and, according to its model, the state bodies being juxtaposed, acting freely within their competences, deprived of the means to get in touch, cannot give rise to a functional society that pursues the common good.

In the case of functional collaboration or the balance of powers that this collaboration implies, the normative functions are shared among institutions, and they must be analysed as partial bodies, holders of a fraction of the normative function. For the dance to take place, these simple bodies, taken together, must form a compound organ, the true holder of the function now considered in its entirety. The key is consent. From a legal point of view, the consent of the bodies will be understood as the faculty to legislate, so to actually compose the content of the act, as well as the faculty to prevent, i.e. to oppose the enactment of the act, but without being able to modify it⁶⁷. Consent is an absolute necessity, as in the case of tango, for it is not enough to share functions between bodies to guarantee the balance of powers, but the bodies must actually participate in the exercise of functions, i.e. be in a position to consent to the enactment of the act. Montesquieu is explicit in this regard⁶⁸ when he says that bodies can only be thought of as partial bodies, in order to achieve the goal of balance, and the state authorities cannot be assigned the fullness of a normative function: the shared

⁶⁴ We recognize the formula of Hobbes, from *Leviathan*, against which Montesquieu vehemently rises in *Défense de L'Esprit des lois* (1750), Barillot, Genève, http://classiques.uqac.ca/classiques/montesquieu/defense_esprit_des_lois/defense_esprit_des_lois.pdf, accessed 3 May 2019.

⁶⁵ Montesquieu, *op. cit.*, livre XI, chapitre 3, p. 586.

⁶⁶ *Ibidem*.

⁶⁷ Such a definition therefore excludes, as professor Troper notes, “Any participation other than ‘decisional’”. The intellectual participation of an expert or adviser in the drafting of the act or in the determination of its content does not make them co-authors of this act, as their consent is not required for its creation”, in *La séparation des pouvoirs et l’histoire constitutionnelle française*, LGDJ, Paris, 2014, p. 21. See also J.-J. Chevallier, «De la distinction établie par Montesquieu entre la faculté de statuer et la faculté d’empêcher», in *Mélanges Maurice Hauriou*, Sirey, Paris, 1929, pp. 137-158.

⁶⁸ We mention the famous passage from *De l’Esprit des lois*: “This is the fundamental constitution of the government we are talking about. As the legislative body is made up of two parts here, one will chain the other through its mutual power to prevent. Both will be linked to the executive authority, which will itself be linked to the legislative one.”, Montesquieu, *De l’Esprit des lois*, *op. cit.*, livre XI, chapitre 6, p. 589.

exercise of functions corresponds to organic complexity, the chaining of a plurality of instances, each holding a portion of the power to decide, the bodies being chained and counterbalanced, like the bodies dancing tango. It is the condition of organizing the consent of each body to the decision-making which can guarantee that the measure adopted translates the common will, and not just one, a condition ensuring the balance of powers.

Montesquieu's model adds an extra level to the negative rule of non-cumulation of functions. It is not absolutely forbidden, in principle, to cumulate the elaboration of the law and its implementation, it can be even indispensable, provided that it is only partial, the balance of powers aiming to link them by a subtle mechanism synchronizing the moment when their will is expressed simultaneously: "instead of intervening at different stages of the process of concretizing the law, instead of ruling on different legal objects, the state authorities decide synchronically on the same object"⁶⁹.

Eisenmann, together with Montesquieu, considers that "the factual freedom enjoyed (...) by the bodies in Montesquieu's system does not consist at all in the freedom to fulfil their own will, that is, to enact and implement the legal norms they want, at will, but to propose or agree to or refuse the decisions proposed to them"⁷⁰.

The chain of powers, as in the case of the bodies dancing tango, produces the counterbalancing of the state authorities, which guarantees the mutual limitation of the organic forces converging towards the organization of power sharing, so that nobody can appropriate it. The common field of action, the ballroom, society, belongs to the division of public authority, each body being recognized the power to express its own will, but a will which is not only legally equal in value, but expressed in a concurrent and competitive manner. Consequently, the authorities that make up the complex body annihilate each other by stimulating each other, through balance and mutual control of powers⁷¹: "a vast system of balance by which the forces, armed with legal means, neutralize each other through interaction"⁷², avoiding the abuse of power by limiting and balancing each other⁷³.

As in the case of tango, the power to prevent is "the right to annul the decision of the other", alone, because the one who has the ability to prevent also has the right to approve, "this approval being nothing more than a statement which derives from this ability which he does not use"⁷⁴. At the level of society, the power to prevent is a power of variable nature and legal form, which gives its holder the possibility of annulling (temporarily or definitively) the effect of a decision adopted by another body, provided that it ensures compliance with the principle of the separation of powers.⁷⁵

⁶⁹ S. Roland, «Les figures organiques de la légitimité dans la doctrine constitutionnelle de Montesquieu», *Revue Française d'Histoire des Idées Politiques*, 2009/1 (n° 29), pp. 3-75, <https://www.cairn.info/revue-francaise-d-histoire-des-idees-politiques1-2009-1-page-3.htm>, accessed 30 September 2019.

⁷⁰ Ch. Eisenmann, «L'Esprit des lois et la séparation des pouvoirs», *op. cit.*, p. 29.

⁷¹ A. Passerin d'Entreves, *La notion d'État*, Sirey, Paris, 1969, p. 147.

⁷² J. Petot, «La notion de régime mixte», in *Mélanges Charles Eisenmann*, Cujas, Paris, 1975, p. 105.

⁷³ B. Manin, *Les principes du gouvernement représentatif*, Flammarion, coll. Champs, Paris, 1995, p. 66.

⁷⁴ Montesquieu, *De l'Esprit des lois*, *op. cit.*, livre XI, chapitre 6, pp. 404-405.

⁷⁵ G. Glénard, «La doctrine publiciste française et la faculté d'empêcher», *Revue d'histoire des facultés de droit et de la science juridique*, n° 24/2004, p. 100.

The 20th century replaced the sovereignty of the monarch (from Montesquieu's time) with the sovereignty of the people or the nation, leaving aside the issue of combating royal absolutism, sovereignty no longer having to be chained, but consecrated⁷⁶. Carlos-Miguel Pimentel considers that the separation of powers has become the greatest constitutional myth of liberal modernity, a sacrosanct principle for the entire legal tradition, but a notion empty of any content⁷⁷. Armel Le Divellec describes this principle of the separation or division of powers as a "dogma", noting that the balance of powers is conceived "as a kind of aesthetics of constitutional theory"⁷⁸.

In order to account for the functioning of society in the light of tango, as a metaphor of today's society, we have found, along with many constitutionalists, the non-existence of the separation of powers, this theory being unable to describe the reality of the facts⁷⁹, the only rule that subsists from the theory of the separation of powers being the principle of the independence of the judicial power⁸⁰.

Beyond the traditional conception that the judge represents only the "mouth that utters the words of the law", the act of observing reality shows that the judge has considerable power of interpretation. We cannot deny that the hierarchical model (statist, positivist, monological) characteristic of the common sense of jurists would be strongly questioned today and that, from all sides, there are attempts to formulate alternative theories⁸¹. Therefore, the traditional conceptions of the separation of powers must be deeply reanalysed, an adequate reading being given, in our opinion, by the tango metaphor, which thus reveals a reality: it is no longer a question of a strict separation of powers, as a strict separation of functions, in which the powers intervene only in their sphere of competence, but of a necessary flexibility in the relations between these powers. By this metaphor we do not question the principle itself, but the ways of arranging it. It is about a strong figure of harmony emerging from this metaphor, the imaginary of the ball (society as a whole) being the meeting territory and the vector of achieving good understanding. By the tango metaphor, we have tried to offer a solution to the atomization of the social fabric torn by individualistic strategies, proposing a profound rearrangement of everyday life and identity, as the idea of limit is no longer seen according to the image of rigid and impermeable borders delimiting territories considered autonomous, but as a result of the relationships established within the tango between the protagonists, in a dynamic, pluralistic and relational approach.

⁷⁶ *Ibidem*, p. 137.

⁷⁷ C.-M. Pimentel, «Le sanctuaire vide: la séparation des pouvoirs comme superstition juridique?», *Pouvoirs*, n° 102, 2002, p. 119 and 121.

⁷⁸ A. Le Divellec, *Le gouvernement parlementaire en Allemagne. Contribution à une théorie générale*, LGDJ, Paris, 2004, n° 37, p. 58, and n° 247, p. 351.

⁷⁹ J.-P. Feldman, «La séparation des pouvoirs et le constitutionnalisme. Mythes et réalités d'une doctrine et de ses critiques», in *Revue française de droit constitutionnel*, vol. 83, no. 3, 2010, pp. 483-496.

⁸⁰ E. Zoller, *Droit constitutionnel*, PUF, Paris, 1998, p. 301.

⁸¹ F. M. Van de Kerchove, *De la pyramide au réseau....*, *op. cit.*, Introduction.

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