



## **Papeles el tiempo de los derechos**

**“Human rights and early modern utopian political thought”**

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# Human rights and early modern utopian political thought\*

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## I. Introduction.

Thomas More, speaking through Raphael Hythlodæus, ends his description of the institutions, manners and customs of the utopians saying: «Now I have described to you, as exactly as I could, the structure of that commonwealth which I judge not merely the best but the only one which can rightly claim the name of a commonwealth» (1964, 146). What did Raphael see in the island of Utopia as if to judge not merely the best but the only commonwealth? Did he see a *civitas libera* where people enjoyed individual freedoms as one of the profits to be derived from living in a well-ordered society?

An interpretation of growing influence in some circles is that utopian thought is bound to lead to tyranny, violence and totalitarianism. The reading of utopian thought I am suggesting attempts to refute this idea. In my opinion, human rights are not absent in literary utopias because a number of early modern utopian authors were aware of the main legal, political, economical and religious discussions of their context and they reflected them in their literary utopias. The limits of the action of the State and the freedom from arbitrary dominance -what we today call human rights- were part of this context of ideas and discussion. In this paper I would like to explain how the vindication of individual freedoms and some of the main issues in the history of human rights have been expressed and can be found in literary utopias that have shaped utopian thought since the sixteenth-century. In my opinion, the status of human rights is a recurrent theme through the history of utopian thought because proposals for ideal societies necessarily involve recognition, protection and development of those individual freedoms which are otherwise denied.

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In a number of ways, the search for the ideal society can be seen as a vindication of human rights and an expression of the satisfaction of basic needs. The ideal society can claim to be a *better* society since the people who live in it have rights and freedoms denied or basic needs not covered in real life. Furthermore, what we dislike in dystopias such as *1984* and *Brave New World* is that human dignity is denied. It could even be said that the history of human rights and utopian thought run in parallel since both demand *de optimo rei publicae*.

The first section of the paper deals with the general connection between human rights and utopian thought as well as specific variations in respect to each author, each context and each ideal society model. The second section explores how we should study the question of human rights inside the model of ideal society that emerges from the *Utopia* of Thomas More in which law is an essential tool for setting up and maintaining the ideal society.

## II. Human rights and utopian political thought.

If we look at the relationship between human rights and utopian thought from a broad perspective, it might be thought that the relationship is unproblematic because the first picture one has of the ideal society is the vision of paradise, where humanity is liberated from its chains (Ramiro Avilés, 2001a, 226). If we have this picture in mind, it is difficult to see anything else than complementariness between utopian thought and human rights.

But, also from the broad perspective, there is another kind of connection between human rights and utopian thought based on *absence* and *disagreement*. As in the history of utopian thought, where the world is turned upside down and scarcity is converted into abundance (Sargent, 1994, 3-4), the statutes including human rights shows us how human rights are lacking in daily life. Besides, if reality is not acceptable, it is impossible to understand the struggle for human rights. So, the struggle for and the achievement of human rights by individuals or groups are explained from the perspective of alienation from the existing political system, which denies rights and freedoms (Mugerza, 1997, 60). As a result, the recognition of new rights or the expansion of the number of rightholders has always been, in some sense, *utopian*.

Utopian thought then can be seen as an expression of the vindications of the excluded, meaning, those who were neither actively involved in the process of governing nor had any say in choosing those who rule over them or had not seen their rights recognized in the legal system (Harris, 2001, 1). Nevertheless, those who were excluded had real political vindications because, as Tim Harris puts it, «ordinary men and women did have opinions about how duly constituted authority was supposed to be exercised, and how those who governed were supposed to rule» (2001, 6).

Legal rules including new rights, like those enacted by King Utopus for the island of Utopia, can be seen as part of the process of awakening to a new

world, as the ferment of an *economic* model of society: «They have adopted such institutions of life as have laid the foundations of the commonwealth not only most happily, but also to last forever, as far as human prescience can forecast» (1964, 151). The main aim of any law-maker or founding father, as Utopus was, may be seen as the establishment of a political system respectful to human rights. So, when any law-maker plans to reform any statute or to establish a system of government, she or he visualises a society that *is not yet* but *could be*. The law-maker envisages their proposed new statutes in the context of a freer, fairer and more equal society. But, when the new legal system is realised, its utopian character disappears because it has achieved a *topos*. Moreover, enacting these new laws and statutes will be a unique test since their imputed goodness will be tested and we will know whether we have built an earthly paradise or hell (Peces-Barba & Ramiro Avilés, 2004, 14).

On the other hand, if we look at the relationship from a narrow perspective, such complementariness depends on three factors: the model of ideal society, the particular author and the specific context. As José Antonio Maravall tells us, utopian thought enacts a comparison between «the experience of the real city where in fact men live» and «the yearning for the ideal society that directs us toward stronger or less strong aspirations for reform». This aspiration «appears in different forms from the earliest years of Western history» (1976, 13-14). To be precise, and according to the typology of J.C. Davis, there are five models of ideal society. They are Cockaigne, Arcadia, Perfect Moral Commonwealth, Millennium and Utopia (1981, 20-40). Due both to the differences among them and to how society and law are described, each ideal society model sets out a distinctive relationship with human rights (Ramiro Avilés, 2002, 233-254). In Utopia, which embodies an ideal society by means of the perfection of its legal, bureaucratic and formal structures (Davis, 1968, 174), law and State appear to be necessary elements for accomplishing social reform and setting up a new way of governing and administering goods and people: «He rehearsed not a few points from which our cities, nations, races and kingdoms may take example for the correction of their errors» (More, 1964, 15). As Giampaolo Zucchini asserts, the Renaissance utopists aimed at achieving earthly happiness through a new

model of society and/or an alternative State (1986, 409). In this model of ideal society, according to Miriam Eliav-Feldon, «law is a subject that received a great deal of attention from the utopists and deserves close examination» (1982, 110). As stated in *Utopia*: «This is the law and this is the procedure in the matter, as I have described to you» (1964, 33).

As far as the authors are concerned, although all have tried to define *de optimo rei publicae*, not all of them have given the same solution for solving the legal, political, economical or religious problems that, according to them, lie at the root of social imperfection. Each author had his own particular point of view and solution. So, for instance, Thomas More and Tommaso Campanella agree with each other on the communal property issue, as against James Harrington and his system of private property, but More and Campanella disagree on liberty of conscience, and we can find More and Harrington sharing a similar opinion on this point (Ramiro Avilés, 2002, 270-271, 417). And, as far as the historical context the utopian text is written, the complementarity between human rights and utopian thought will be reformulated from time to time because human rights are historical and then the rights and freedoms claimed in each literary utopia will express historical circumstances. So, for instance, if we read *Ecotopia* written by Ernest Callenbach in 1975, we see the new environmental rights, the fourth generation of human rights, included (Ramiro Avilés, 2001b). Therefore, complementarity will depend for its detailed expression on the particular circumstances and context in which literary utopia authors find themselves.

One objection to the complementarity of utopian thought and human rights might be that Utopian model of ideal society attempts to control all behaviour and this control is achieved through strict and inflexible enforcement of rules: «Being under the eyes of all, people are bound either to be performing the usual labor or to be enjoying their leisure in a fashion not without decency» (More, 1964, 83). The Utopian model of ideal society envisages a system of legal rules controlling public and private behaviour (Ramiro Avilés, 2001a, 242). In More's

*Utopia* and Campanella's *La Città del Sole*, the State rules everything, even the most personal sphere (Tasso, 1999, 310). Legal comprehensiveness is therefore one of the utopian system's characteristics, aspiring to rule all possible human actions (Raz, 1991, 175-176). There is normative intervention from birth to death and, according to Gerrard Winstanley, «There will be Rules made for every action a man can do» (1965, 512). In the sixteenth- and seventeenth-centuries, when human rights and utopian thought encounter one another, some behaviour, nowadays considered private, was regulated and other kinds of behaviour, nowadays considered public, first began to be regulated<sup>1</sup>. Hyper-regulation or comprehensiveness was not thought strange because the modern State had to increase its presence in society with new institutions and new areas of control (Oestreich, 1982, 138). According to J.C. Davis, in *Utopia* «every aspect of life must be regulated in a coordinated way. Institutions, educational programmes, legal sanctions, and custom must converge to the desired end, and all of these processes must operate impersonally and continuously» (1991, 333). In this sense, Utopian society operates on a general rule, as Lyman T. Sargent has stated, «if the law did not say expressly that you could do something, you could not do it» (1975, 91). Comprehensiveness in *Utopia* is a product of the idea that every action may be a possible cause of social disorder and that there should therefore be no differentiation between the public and private spheres: «In *Utopia*, where nothing is private, they seriously concern themselves with public affairs» (More, 1964, 146). The amalgamation of the spheres went further because in that period, according to Gerald Oestreich, «State and society were not separate entities, as they were considered to be in the early nineteenth-century, but formed a unity» (1982, 160).

The question of whether human beings are really free in early modern Utopian model of ideal society, where every action may be controlled, must then be seen in a historical perspective. This has been extensively debated. Some scholars, such as Isaiah Berlin and Schlomo Avineri, have argued that there is

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<sup>1</sup> We can see this in *Utopia* when marriage rules are described: «In choosing mates, they seriously and strictly espouse a custom which seemed to us very foolish and extremely ridiculous» (1964, 110).

not freedom but slavery in utopia. The answer to this affirmation has been that, in contrast with twentieth-century attitudes, it was not assumed in early modern European political thought that authority and liberty were antithetical (Davis, 1993a, 28). According to J.C. Davis, «we should not automatically assume that liberty and authority are antithetical [and] we should not automatically identify liberty with personal autonomy or individual self-expression, self realization» (1992, 513) if we wish to understand how it is possible to reconcile utopian thought and human rights within an early modern context. When Isaiah Berlin states that legal coercion is tantamount to depriving some of their freedom (1996, 121), or when Schlomo Avineri states that totalitarianism permeates every aspect of daily life in utopia (1962, 287), we may be witnessing acts of anachronism. These views may be set aside because during the sixteenth- and seventeenth-centuries, «in terms of civil liberty a congruence between liberty and law was sought in order to defend the subject from will and power (...) the essence of freedom was to live under known rules and not to be subject to the arbitrary wills of other men was a commonplace formulation of the seventeenth century well before John Locke gave his own utterance to it» (Davis, 1993a, 28). The problem arises, according to J.C. Davis, because Locke's thesis on freedom (no arbitrary dominance), has been neglected and Hobbes' thesis on freedom (no interference), has been adopted and therefore the western idea of freedom was become incompatible with utopian social order (1981, 385)<sup>2</sup>. If we accept that freedom and authority were not antithetical and that freedom was achieved by living under known rules in society enabling people to enjoy their rights and freedoms and protecting them from tyranny, laws in Utopia become tools of liberation not of oppression. These were recurrenting ideas in the sixteenth- and seventeenth-centuries because the State and law were not seen as negative but as positive tools for social reform (Bobbio, 1994, 176-179). As J.C. Davis affirms, «freedom and law walked hand in hand offering mutual protection against will, arbitrary power and tyranny» (1992, 513) and «forms were about regularity and thereby about predictability. This was the principal way in which they induced and confirmed a sense of order. Constitutional convention, due process, the rule of law -in all their formality- reconciled liberty

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<sup>2</sup> John Locke, *Second Treaty on Civil Government*, chapter 4, paragraph 22; Thomas Hobbes, *Leviathan*, II, 21.

and authority, constraining the former from the excesses of licence and the latter from the arbitrariness of tyranny» (Davis, 1993b, 282). In J.C. Davis opinion, «in Utopia, formality not only reconciled liberty and authority, but also eliminated the arbitrary and contingent from social life (...) utopian formality guaranteed and extended the liberty of utopian citizens» (1993a, 29).

We should admit, therefore, that in early modern Utopian societies it was possible to find a kind of mixture among *liberté des anciens* and *liberté des modernes*, if we use the terminology of Benjamin Constant, or among *positive freedom* and *negative freedom*, if we use the terminology of Isaiah Berlin, or freedom from arbitrary dominance, if we use the terminology of John Locke and republicanism (Pettit, 1997; Skinner, 1998; Barranco Avilés, 2000). In my opinion, the last of these is the kind of freedom that accords better with the Utopian model of ideal society since it is based on the idea that legal restrictions in a well ordered society are not arbitrary dominance.

On the other hand, J.C. Davis has also argued that participatory freedom was not a priority because the utopian designer saw it «as always involving risks too great to be sustained and his pessimistic view of the nature of man reinforces that attitude. Men will choose wickedly, selfishly and foolishly» (1981, 381). I disagree because, in my opinion, if we take into account the notion of freedom from arbitrary dominance, at the beginning of the history of the Utopian model we can find a precursor of the free state «in which the actions of the body politic are determined by the will of the members as a whole» (Skinner, 1998, 26). The will of the people has no mystery but was simply «the sum of the wills of each individual citizen» (Skinner, 1998, 28-29). It is possible that, from the point of view of the freedom from arbitrary dominance, political participation was a valuable tool in early modern utopia thought. Thomas More in his *Utopia* had put forward one possible solution to the exercise of a right of participation in the making of laws when utopians live in self-governing cities that manage their own affairs by means of elected magistrates (syphogrant and tranibor): «Every thirty families choose annually an official whom in their ancient language they call a

syphogrant (...) Over ten syphogrants with their families is set a person once call a tranibor (...) The whole body of syphograns, in number two hundred, having sworn to choose the man whom they judge most useful, by secret balloting to appoint a governor (...) The tranibors enter into consultation with the governor every other day and sometimes, if need arises, oftener. They take counsel about the commonwealth (...) It is provided that nothing concerning the commonwealth be ratified if it has not been discussed in the senate three days before the passing of the decree» (1964, 67). As we can see, the senate of the island of Utopia is a national assembly of the more virtuous chosen by the families to legislate on their behalf. Later, and James Harrington's *The Commonwealth of Oceana* is also a good example, in literary utopias such as *L'An 2440. Rêve s'il en fut jamais* by Luis-Sébastien Mercier, whose final version was published in 1786, we can find suitable instruments for a contemporary political participation with citizens passing statutes in Parliament, developing further the idea of *civic personae* (Furet, 1998, 63; Ramiro Avilés, 2002, 332-342).

### **III. Human rights in Utopia.**

Utopia is that ideal society model in which human rights feature in greater complexity, since this model retains the State and law as a part of its ideal society vision. The importance of this arises because human rights are traditionally seen as limits to the action of the State. In Utopia, ambiguity over this issue arises because the State is ideal (Ramiro Avilés, 2002, 405-410). As Barbara Goodwin states, «if modern utopias do not dwell overmuch on civil rights, it is because these safeguards against a growing states apparatus would be superfluous in a utopian society lacking the problem» (1980, 397). Nevertheless, literary utopias address some of the main issues in the history of human rights in their quest to remove arbitrary dominance: a struggle for the rule of law, liberty of conscience, the humanization of criminal law, property rights, resistance to oppression and the role of natural rights.

a.) *The struggle for the rule of law.*

The struggle for the rule of law is the starting point for a new way of understanding the relationship between utopian thought and law (Ramiro Avilés, 2001a). In the real world the power of the State might be potentially limitless and *princeps legibus solutus est* a dominant idea, but in ideal societies like those visualised by Thomas More and James Harrington the power of the ruler had limits. According to James Harrington, «But Leviathan [Hobbes], though he seems to skew at antiquity, following his furious master Carneades, hath caught hold of the public sword, unto which he reduceth all manner and matter of government (...) But as he said of the law that without this sword it is but paper, so might have thought of this sword that without an hand it is but cold iron (...) Again, if the liberty of a man consist in the empire of his reason, the absence whereof would betray him unto bondage of his passions; then the liberty of a commonwealth consisteth in the empire of her laws, the absence whereof would betray her unto the lusts of tyrants» (1977, 165, 170). So, Utopia is an example of a well-ordered government, because it is governed by laws and not by arms. Government is not a personal matter, but an institutional one and the rulers are not above the law (Ferguson, 1965, 16). Tyranny is outlawed and most utopists equate it with government by arms. Gerrard Winstanley in *The Law of Freedom in a Platform* makes this connection clear when he affirms: «the Kings Power lies in his Laws, not in the Name (...) The Tyrants in all ages have made use of this mans name» (1965, 527, 534). In this same sense James Harrington states: «Government (to define it *de jure* or according to ancient prudence) is an art whereby a civil society of men is instituted and preserved upon the foundation of common right or interest, or (to follow Aristotle and Livy) it is the empire of laws and not of men» (1977, 161). So, the morality and personality of the ruler is not the most relevant element for attaining the best form for the commonwealth; the effectiveness of the institutional framework is vital. This is the point at which George Logan sees Thomas More diverging from his friends, «humanists, and especially the northern humanists with whom More was affiliated, were strongly committed to a personal rather than an institutional view of politics (...) More is going to stress instead the importance of non-personal factors –mores and institutions– in securing good government» (1983, 38-39). In this sense, the inhabitants of the island of Utopia «are infinitely better than

any other people at the time, but they are not significantly better by nature; they are better because their social institutions are better» (Sargent, 1975, 89).

The struggle for the rule of law entailed the reform of the whole legal system because, as Miriam Eliav-Feldon states, «society, according to our writers, can be reformed only through good laws and good institutions that will protect men from evil within them. The serious utopia is, in fact, a complex legal network of such close mesh as to leave individuals with very little freedom of action». And she concludes, «all our utopists, irrespective of their country, denomination, or particular background, acknowledged the widespread discontent with the existing legal system and, except for those who rejected the entire subject and took refuge in fantasy, devoted much thought and space in their descriptions of imaginary societies to offering an alternative in the form of an ideal legal system» (1982, 109-111). A radical reform of society would be attained by the abolition of unfair and imperfect rules and by adopting new ones. Accordingly, criticism of the law characterises many literary utopias of the time. Robert Burton's *Anatomy of Melancholy* illustrates this well: «To see so many lawyers, advocates, so many tribunals, so little justice; so many magistrates, so little care of the common good; so many laws, yet never more disorders.... To see often a most unjust man preside over justice, an impious man over religion, a most ignorant man decide questions of learning, a most lazy man questions of labor, a monster questions of humanity! To see a lamb executed, a wolf pronounce sentence, a robber arraigned, and a thief sit on the bench, the Judge severely punish others, and do worse himself!...Laws are made and not kept; or if put in execution, they be some silly ones that are punished» (1991, 51). The imperfections of the legal system so condemned are both formal and material (Ramiro Avilés, 2001a, 239-244). Formal imperfections derive from problems connected with the complexity of law enforcement and the generation of elaborate codes; law is imperfect because it is made up of rules which are hard to understand, lengthy texts, unfamiliar or unknown laws: «They have very few laws because very few are needed for persons so educated. The chief fault they find with other peoples is that almost innumerable books of laws and commentaries are not sufficient. They themselves think it most unfair that any

group of men should be bound by laws which are either too numerous to be read through or too obscure to be understood by anyone» (More, 1964, 114). The solution was to enact a code of few and comprehensible laws, which would be inexorably put in execution. On the other hand, the main material problem of the legal system historically was the separation of law and justice. According to Giampaolo Zucchini, the crisis of contemporary legal systems, was explicitly underlined in Renaissance utopias by dramatising this separation, a separation that the utopians wished to abolish by creating social justice founded on citizens' virtue and the virtue of the new social and institutional systems (1986, 423). As Thomas More says through Rafael Hythlodæus, «But if this agreement among men is to have such force as to exempt their henchmen from the obligation of the commandment, although without any precedent set by God they take the life of those who have been ordered by human enactment to be put to death, will not the law of God then be valid only so far as the law of man permits?» (1964, 30).

*b.) Liberty of conscience*

Concerning liberty of conscience, utopian writers falls into two opposing camps. In the first one are Thomas More and James Harrington defending it, and in the other are Tommaso Campanella, Samuel Gott and Ludovico Agostino proscribing it (Ramiro Avilés, 2002, 417-432). As Raymond Trousson remarks, deism, the rejection of Churches and pluralism of conscience are not an exclusive feature of Enlightenment utopias because from Thomas More to Robert Burton we find the same religious tolerance and plurality, the same suspicious towards the Churches (1995, 20). In *Utopia*, Thomas More tells us that liberty of conscience was one of the first enactments of King Utopus: «From the very beginning, therefore, after he had gained the victory, he especially ordained that it should be lawful for every man to follow the religion of his choice» (1964, 133). So, in the island of Utopia «there are different kinds of religion not only on the island as a whole but also in each city. Some worship as god the sun, others the moon, others of the planet» and they do not try to deter others from their religion (1964, 130, 132). However, this liberty is not limitless since King Utopus also enacted «that no one should fall so far below the dignity

of human nature as to believe that soul perish with the body or that the world is the mere sport of chance and not governed by any divine providence» (1964, 134). *The Commonwealth of Oceana* is another example of a society in which liberty of conscience is part of the *ordini* of the ideal society: «But as a government pretending unto liberty, and suppressing the liberty of conscience, which (because religion not according to a man's conscience can as to him be

taken place fifty years before. In this respect, the work is associated with that form of millenarian writing which, in its treatment of the latter-day glory, emphasised the preliminary conversion of the Jews» (1981, 146). Likewise, Tommaso Campanella, Ludovico Agostino, Ludovico Zùccolo, Johann Valentin Andreae, Anthony Legrand and Johann Eberlein von Günzburg wrote books describing ideal societies in which liberty of conscience has no place since they were defending theocracies (Trousseau, 1978, 395). Günzburg held, for instance, that any person teaching an unorthodox prayer should be beheaded (Groag Bell, 1967, 131) and Andreae, influenced by Calvinist Geneva, described a society intolerant of those faiths not accepted by the religious and civil power. The inhabitants of Christianopolis prayed three times a day and nobody was exempt from these collective acts of worship (Andreae, 1999, 173). In *Scydromedia*, a text written by Antoine Legrand, King Scydromedus warned against the risks attendant upon plurality of faiths and accordingly established a national church and with religious unity as legal obligation. He even banned religious controversy in order to avoid social dissensions (Ryan, 1936, 50). Unity was so precious that was impossible to leave any room for individual conscientious choice in religion because it was considered extremely dangerous for communal life.

The Counter-Reformation and the religious wars of early modern Europe had a marked influence on authors in this group because with it went a demand of religious uniformity and intolerance of religious pluralism. Ludovico Agostino and Ludovico Zùccolo described ideal societies after the Council of Trent and in their books, *Reppublica Immaginaria* and *Reppublica di Evandria*, religion informed all human affairs and they manifested the intransigence of one expression of Roman Catholicism. In this sense, Luigi Firpo found in Ludovico Agostino's ideal society a defence of counter-reformation ideals: religious renovation, the subordination of humankind to God, the triumph of Catholicism, the exaltation of Papacy, and the extermination of heresy (1957, 9).

c.) *The humanization of criminal law*

The third issue in shaping the history of human rights is the humanization of criminal law. Although substantially the humanization process is associated with the eighteenth-century (Tarello, 1976, 383), from the sixteenth- and seventeenth-centuries we can find some of the preconditions for a transformation of the criminal law. Renaissance humanism is full of criticism of a criminal law characterised by unequal application of the law, by the ambiguity of the criminal law, by torture, ineffectiveness of the rules and disproportionality. So, in *Utopia* we see a future Lord Chancellor rigorously attacking existing judicial practice and by implication anticipating its humanization when Thomas More says, again through Raphael Hythlodæus, that if equity has any meaning, not all offenses are equal and there is no similarity or connection between killing a man and robbing him of a coin. And he remarks, «surely everyone knows how absurd and even dangerous to the commonwealth it is that a thief and a murderer should receive the same punishment. Since the robber sees that he is in as great danger if merely condemned for theft as if he were convicted of murder as well, this single consideration impels him to murder the man whom otherwise he would only have robbed. In addition to the fact that he is in no greater danger if caught, there is greater safety in putting the man out of the way and greater hope of covering up the crime if he leaves no one left to tell the tale. Thus, while we endeavor to terrify thieves with excessive cruelty, we urge them on the destruction of honest citizens» (1964, 29-30). Here in 1516 the theses of Beccaria and Voltaire are anticipated.

#### *d.) Property*

The question of property is also a disputed issue in early modern Utopia because natural shortage is a hallmark in this model of ideal society. Utopia did not trust nature to resolve political problems therefore it was necessary to find a new institutional system to generate artificial abundance, meaning equality of distribution, or to control the appetite for ownership. So utopists designed new models of property, differing between each expression of literary utopia. The new system will be fairer than the existing one and by means of it the utopist seeks social justice and the common good with property as one cornerstone of this ideal society model (Eliav-Feldon, 1982, 79). Thomas More, Tommaso

Campanella and Johann Valentin Andreae saw private property as an endemic illness and therefore to be abolished and replaced by a system of communal property. So, Thomas More, speaking again through Rafael Hythlodaeus, stated: «Yet surely, my dear More, to tell you candidly my heart's sentiments, it appears to me that wherever you have private property and all men measure all thing by cash values, there is scarcely possible for a commonwealth to have justice or prosperity (...) I am fully persuaded that no just and even distribution of goods can be made and that no happiness can be found in human affairs unless private property is utterly abolished» (1964, 52-53).

On the other hand, James Harrington in *The Commonwealth of Oceana* retained a private property system in his new model of society but one operated under different principles. In the new private property system, agrarian laws, were a key element in Oceana maintaining a new social and political equilibrium and preventing accumulation of an overbalance of land by the nobility (Davis, 1981, 231-234). According to Harrington, «Fundamental laws are such as state what it is that a man may call his own, that is to say property, and what the means be whereby a man may enjoy his own, that is to say protection (...) every man who is at present possessed, or shall hereafter be possessed, of an estate in land exceeding the revenue of two\* thousand pounds a year, and having more than one son, shall leave his lands either equally divided among them (...) and no man, not in present possession of lands above the value of two thousand pounds by the year, shall receive, enjoy (except by lawful inheritance), acquire or purchase unto himself lands» (1977, 230-231).

#### *e.) Resistance to tyranny*

Resistance to tyranny is also an important issue in this type of ideal society, reflecting the utopists concern with the perpetual maintenance of the best form of the commonwealth and the freedom from arbitrary dominance. As Thomas More warned, «well and wisely trained citizens are not everywhere to be found» (1964, 15) and according the problem of tyranny had to be addressed. In the

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\* J.C. Davis has warned me of the printer's error in J.G.A. Pocock's edition.

island of Utopia new rules had been enacted in order to prevent the corruption of the *princeps* (Fenlon, 1981, 453). So, for instance, Ademus was elected to a post held for life but under legal control because utopians know the prince is a fallible human: «The governor holds office for life, unless ousted on suspicion of aiming at a tyranny» (1964, 67). In the island of Utopia the law prohibited political debate outside the senate: «To take counsel on matters of common interest outside the senate or the popular assembly is considered a capital offense. The object of these measures, they say, is to prevent it from being easy, by a conspiracy between the governor and the tranibors and by tyrannous oppression of the people, to change the order of the commonwealth» (1964, 67-68). True people cannot be deprived of their liberty by having its actions determined by the arbitrary will of anyone other than the representatives of the body politic. As Quentin Skinner states, «if you wish to maintain your liberty, you must ensure that you live under a political system in which there is no element of discretionary power, and hence no possibility that your civil rights will be dependent on the goodwill of a ruler, a ruling group, or any other agent of the state. You must live, in other words, under a system in which the sole power of making laws remains with the people or their accredited representatives, and in which all individual members of the body politic -rulers and citizens alike- remain equally subject to whatever laws they choose to impose upon themselves. If and only if you live under such a self-governing system will your rulers be deprived of any discretionary powers of coercion, and in consequence deprived of any tyrannical capacity to reduce you and your fellow-citizens to a condition of dependence on their goodwill, and hence to the status of slaves» (1998, 74-75).

Moreover, utopists think that where the rule of law is observed there will be political stability but tyranny, rule without the limits of the law, will be politically unstable. As Gerrard Winstanley declared in *The Law of Freedom in a Platform*, if the king oppressed his people, he was a tyrant and a traitor and he would be overthrown by a secret plot; tyranny was not immortal because inside it there was a rotting and putrid worm (1965, 503).

The fight against tyranny reflects, according to Lyman T. Sargent, the tension between what the prince ought to do and what he ought to refrain from doing (1984, 207). In this sense, in *Utopia* Thomas More used the dialogue between Thomas More *dramatis personae* and Rafael Hythlodæus to discuss the limits of power; if the State is unavoidable, then we have to limit it. *Utopia*, in this interpretation, is a book about autocratic power and how it might be possible to control it. In defence of the commonwealth and the struggle against tyranny, *Utopia* advocates the primacy of the public interest. So, More denies the tyrant the title of king because the latter does not oppress his subjects, does not see them as slaves and looks for their happiness: «For this very reason, it belongs to the king to take more care for the welfare of his people than for his own (...) It is not consistent with the dignity of a king to exercise authority over beggars but over prosperous and happy subjects (...) to have a single person enjoy a life of pleasure and self-indulgence amid the groans and laments of all around him is to be the keeper, not of a kingdom, but of a jail» (1964, 46-47). Their critique avoided the use of the terms dictator or *tyrannus*, an exceptional and appreciated ruler since his objective is to safeguard the commonwealth in times of extreme danger (Baumann, 1985, 111). This positive vision of the dictator can be found in James Harrington (1977, 252-253). The utopist confronted the τυραννος, that is, the tyrant who is a usurper because he rebelled against lawful sovereign and ruled only in his own interest (Baumann, 1985, 112). This kind of tyrant is, according to More, like a bad doctor because he does not know how to treat an illness without causing another one: «In fine, as he is an incompetent physician who cannot cure one disease except by creating another, so he who cannot reform the lives of citizens in any other way than by depriving them of the good things of life must admit that he does not know how to rule free men» (1964, 47). In the same sense, in *The Isle of Pines* Henry Neville found John Phill guilty of tyranny and he was sentenced to death (1999, 72) and Gerrard Winstanley appealed to the magistrates to fight against tyranny: «Therefore, the work of all true Magistrates is to maintain the common Law, which is the root of right Government, and preservation and peace to every one; and to cast out all self-ended principles and interests, which is Tyranny and Oppression, and which breaks common peace» (1965, 538).

#### *f.) Natural rights*

Natural rights are a category of rights that precede both society and the ideal society. In my opinion, they are not relevant in early modern Utopia because only social life shaped by the new statutes and political institutions is significant. In creating, consolidating and defending a new model of society, natural rights cease to be relevant because people must integrate into that society setting aside previous rights and duties. So, for instance, rights of resistance to tyranny, to communal property or liberty of conscience do not exist in *Utopia* as natural rights utopians recovered when King Utopus conquered or liberated them but as a protections inherent in the new legal system.

The legal system which matters in Utopia is the one created by men. Natural freedom is meaningless because early modern Utopian authors thought there was no freedom out of positive law, no liberty without the protection of the utopian construct. In Utopia the civil life of the people predominates and their freedom is civil (Davis, 1992, 513-514). According to Richard Tuck, «Humanist lawyers found it virtually impossible to talk about natural rights, and extremely difficult to talk about rights *tout court*. What was important to them was not natural law but humanly constructed law; not natural rights but civil remedies» (1979, 33). And Quentin Skinner concludes that «the notion of a state of nature, and the claim that this condition is one of perfect freedom, were assumptions wholly foreign to the Roman and Renaissance texts» but it was possible to find in them an exaltation of the idea of civic liberty (1998, 19).

#### **V. Conclusion.**

Early modern law based Utopia was not the secular hell created by twentieth-century totalitarian regimes. As Miriam Eliav-Feldon stated, «the Renaissance social reformers were blissfully ignorant of the experience of twentieth-century civilization with totalitarian regimes» (1982, 125). Utopian societies are authoritative but not totalitarian, though «the [most important] tendency in this

century has been to equate utopia with force, violence, and totalitarianism» (Sargent, 1982, 568). In this sense, Barbara Goodwin argues: «although a minority of utopians have seen coercion and even violence as a lamentable but necessary means to change, a survey of utopian literature does not establish anything approaching a *necessary* and *universal* association of utopianism with coercive means» (1980, 395).

Freedom from arbitrary dominance may help to understand how respect for human rights has been an important part in early modern utopia thought. Furthermore, the achievement of freedom from arbitrary dominance is a contemporary political ideal that leads us to a new view of society. In this sense, if someone, nowadays, wished to use utopian thought in order to propose a radical social reform, he or she cannot to forget the *old* and *modern* senses of freedom, the difference between the public and private spheres and the significance of social pluralism. A contemporary Utopia could not limit the political participation rights of citizens and could not enact a rule for every action a man can do in order to get security and a higher level of certainty because then, as J.C. Davis asserts, «utopian formality becomes a prison, absolute in its confinement» (1993a, 29). The problem is that today the light of *eunomia* has lost influence in favor of the shadows of *dystopia* and *caconomia*. Human rights are less important than national security. Utopian thought should be able to overcome these shadows because as John Rawls says in *The Law of Peoples*: «the limits of the possible are not given by the actual, for we can to a greater or lesser extent change political and social institutions and much else. Hence we have to rely on conjecture and speculation, arguing as best we can that the social world we envision is feasible and might actually exist, if not now then at some future time under happier circumstances» (1999, 12).

## References

Andreae, J.V. (1999): *A Description of the Commonwealth of Christianopolis*, trans. E. Thompson, Kluwer, Dordrecht.

Avineri, S. (1962): "War and slavery in More's *Utopia*", *International Review of Social History*, 7, pp. 260-290.

- Baumann, U. (1985): "Thomas More and the classical tyrant", *Moreana*, 86, pp. 108-127.
- Barranco Avilés, M<sup>a</sup>.C. (2000): "Notas sobre la libertad republicana y los derechos fundamentales como límites al poder", *Derechos y Libertades*, 9, pp. 65-91.
- Berlin, I. (1996): "Two concepts of liberty", *Four Essays on Liberty*, Oxford U.P., pp. 118-172.
- Bobbio, N. (1994): *Estado, Gobierno y Sociedad. Por una teoría general de la política*, trad. J.F. Fernández, FCE, México.
- Burton, R. (1991): *The Anatomy of Melancholy*, Kessinger Publishing, Kila.
- Campanella, T. (1995): *La Città del Sole*, cura A. Savinio, Adelphi, Milano.
- Davis, J.C. (1968): "Utopia and history", *Historical Studies*, 13, pp. 165-176.
- Davis, J.C. (1981): *Utopia and the ideal society. A study of English utopian writing 1516-1700*, Cambridge U.P.
- Davis, J.C. (1984): "The history of utopia: the chronology of nowhere", *Utopias*, eds. P. Alexander and R. Gill, Duckworth, London, pp. 1-17.
- Davis, J.C. (1991): "Utopianism", *The Cambridge History of Political Thought 1450-1700*, ed J.H. Burns, Cambridge U.P., pp. 329-344.
- Davis, J.C. (1992): "Religion and the struggle for freedom in the English revolution", *The Historical Journal*, 35:3, pp. 507-530.
- Davis, J.C. (1993a): "Formal utopia/informal millennium: the struggle between form and substance as a context for seventeenth-century utopianism", *Utopias and the Millennium*, eds. K. Kumar and S. Bann, Reaktion Books, London, pp. 17-32.
- Davis, J.C. (1993b): "Against formality: one aspect of the English revolution", *Transactions of the Royal Historical Society*, 6<sup>th</sup> Series, vol. 3, pp. 265-288.
- Eliav-Feldon, M. (1982): *Realistic utopias. The ideal imaginary societies of the Renaissance 1516-1630*, Clarendon Press, Oxford.
- Fenlon, D. (1981): "Thomas More and tyranny", *Journal of Ecclesiastical History*, 32:4, pp. 453-476.
- Ferguson, A.B. (1965): *The articulate citizen and the English Renaissance*, Duke U.P.
- Finley, M.I. (1984): "Vieja y nueva utopía", *Uso y abuso de la historia*, trad. A. Pérez-Ramos, Crítica, Barcelona, pp. 273-294.
- Firpo, L. (1957): "Introduzione", Ludovico Agostino, *La Repubblica Immaginaria*, cura L. Firpo, Ramella, Torino, pp. 7-16.
- Furet, F. (1998): "Democracy and utopia", *Journal of Democracy*, 91, pp. 65-79.
- Goodwin, B. (1980): "Utopia defended against the liberals", *Political Studies*, 28:3, pp 384-400.

- Gott, S. (1902): *Nova Solyma the Idea City; or Jerusalem Regained*, trans. W. Begley, John Murray, London.
- Groag Bell, S. (1967): "Johan Eberlin von Gunzburg's *Wolfaria*. The first protestant utopia", *Church History*, 36:2, pp. 122-139.
- Harrington, J. (1977): "The Commonwealth of Oceana", *The Political Works of James Harrington*, ed. J.G.A. Pocock, Cambridge U.P., pp. 155-359.
- Harris, T. (2001): "Introduction", *The politics of the excluded*, ed. T. Harris, Palgrave, Houndmills, pp. 1-29.
- Logan, G.M. (1983): *The meaning of More's Utopia*, Princeton U.P.
- Maravall, J.A. (1976): "El pensamiento utópico y el dinamismo de la historia europea", *Sistema*, 14, pp. 13-44.
- More, T. (1964): *Utopia*, ed. E. Surtz, Yale U.P.
- Muguerza, J. (1998): *Ética, disenso y derechos humanos*, Argés, Madrid.
- Neville, H. (1999): "The Isle of Pines", *Three early modern utopias: Utopia, New Atlantis, The Isle of Pines*, ed. S. Bruce, Oxford U.P., pp. 187-212.
- Oestreich, G.(1982): *Neostoicism and the early modern State*, eds. B. Oestreich and H.G. Koenigsberger, trans. D. McLintock, Cambridge U.P.
- Papacchini, A. (1997): "Los derechos humanos en *La Ciudad del Sol*", *Los derechos humanos, un desafío a la violencia*, Altamir Ediciones, Bogotá, pp. 411-449.
- Peces-Barba, G.; Ramiro Avilés, M.A. (2004): "La constitución española, 25 años después", *La Constitución a Examen. Un estudio académico 25 años después*, Marcial Pons, Madrid, pp. 9-15.
- Pettit, P. (1997): *Republicanism. A Theory of Freedom and Government*, Oxford U.P.
- Ramiro Avilés, M.A. (2001a): "The law based utopia", *The Philosophy of Utopia*, ed. B. Goodwin, Frank Cass, pp. 225-248.
- Ramiro Avilés, M.A. (2001b): "La cuestión del medio ambiente en el pensamiento utópico", *Revista Interdisciplinar de Gestión Ambiental*, 29, pp. 25-37.
- Ramiro Avilés, M.A. (2002): *Utopía y Derecho. El sistema jurídico en las sociedades ideales*, Marcial Pons, Madrid.
- Rawls, J. (1999): *The law of peoples*, Harvard U.P.
- Raz, J. (1991): *Razón práctica y normas*, trad. J. Ruiz, CEPC, Madrid.
- Ryan, J.K. (1936): "Scydromedia: Anthony Legrand's ideal commonwealth", *New Scholasticism*, 10:1, pp. 39-55.
- Sargent, L.T. (1975): "A note on the other side of human nature in the utopian novel", *Political Theory*, 3:1, pp. 88-97.
- Sargent, L.T (1982): "Authority & Utopia: Utopianism in Political Thought", *Polity*, 14:4, pp. 565-584.

- Sargent, L.T. (1984): "More's *Utopia*: an interpretation of its social theory", *History of Political Thought*, 5:2, pp. 195-210.
- Sargent, L.T. (1994): "The three faces of utopianism revisited", *Utopian Studies*, 5:1, pp. 1-37.
- Skinner, Q. (1998): *Liberty before Liberalism*, Cambridge U.P.
- Tarello, G. (1976): *Storia della cultura giuridica moderna*, vol. 1, Il Mulino, Bologna.
- Tasso, M.L. (1999): "Il deviante nella città perfetta. Modelli repressivi nelle utopie di Campanella e More", *Materiali per una Storia della Cultura Giuridica*, 29:2, pp. 299-330.
- Trousseau, R. (1978): "Eglise et religion en utopie", *Modeles et moyens de la reflexion politique au XVIIIè siècle*, vol. 1, Publications de l'Université de Lille, pp. 383-399.
- Trousseau, R. (1995): *Historia de la literatura utópica. Viajes a países inexistentes*, trad. C. Manzano, Península, Barcelona.
- Tuck, R. (1979): *Natural rights theories. Their origin and development*, Cambridge U.P.
- Winstanley, G. (1965): "The Law of Freedom in a Platform", *The Works of Gerrard Winstanley*, ed. G.H. Sabine, Russell & Russell, New York, pp. 499-602.
- Zucchini, G. (1986): "Critica del diritto, difetti della giurisprudenza e problemi di legislazione in utopie del Cinque e Seicento", *Rivista Internazionale di Filosofia del Diritto*, 63, pp. 409-423.