

## Women's right:

a challenge for the conceptual framework of human rights

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# WOMEN'S RIGHTS: A CHALLENGE FOR THE CONCEPTUAL FRAMEWORK OF HUMAN RIGHTS

*Paola Melchiori*

Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world.

Eleanor Roosevelt (1958 apud Ayton-Shenker, 2018, p. 14).

## INTRODUCTION

The UN Conferences of the nineties were the space where a feminist analysis and women's presence were brought together to enlighten and change, from different perspectives, not only the paradigmatic approach to human rights but the approach to all the global issues of peace, security, development, environment. Feminists discussed deeply among themselves every one of these issues, from every cultural and geographical perspective, and lobbied every delegation of the world who participated in all the UN Conferences.

The Conferences imposed an accelerated assessment of consistency and autonomy to women's specific conceptual challenges that had emerged in many forms, with different degrees and at different times during the 1970s and '80s. Throughout the emergence of what we can call a research for a full presence as subjects in the world, women have confronted their perspectives, their analytical frames, and their political tools; they have tested their strengths and weaknesses.

In 1993, the emerging global feminist movement organized to participate in UN Conference on Human Rights in Vienna. As a result of this organized and strong lobbying presence the Conference recognized the affirmation of women's rights as full universal rights: "Women's Rights are Human Rights." For the first time the identification, categorization and legal treatment of violence against women became a key issue on the global human rights agenda in the Vienna Declaration and Programme of Action. This opened the path to a number of efforts to establish a more systematic standard of women's human rights in general, especially around gender based violence.

What nurtured women's presence and thinking even in the very official public spaces. such as the United Nations Conferences, was the creative social practices of many small groups, born during the seventies, their particular form of knowledge production, the rules of their democratic game, continuities and ruptures they fostered in relation to political and women's traditions and cultures across North and South lines. The women's practices of the seventies were the key factor that sustained the same possibility to declare women's rights as human rights.

The Global Campaign for Women's Human Rights wasn't just adding to the agenda women's issues as those of another "vulnerable group" needing assistance.. Women presented themselves not primarily and only as victims "vulnerable" to abuse but also as subjects of rights. They presented themselves as a powerful human rights constituency with ideas that broadened visions and human rights practices.

The aim then was to re conceptualize human rights from the point of view of women's experiences and feminist analysis, and to question human rights implementation from this perspective. Gender specific abuses suffered by women challenged the conceptual foundation of human rights, enlightened and reaffirmed the connection of women's

rights to other key aspects of human rights; reinforced the affirmation of their universality and indivisibility. They underlined the evidence that classic first or second generation of human rights cannot be separated in most women's experiences, that human rights cannot be separated from economic and social rights. Feminists brought also an intersectional approach to rights: gender, race, class and other factors often overlapping in the violations that most women experience. All these aspects were seen as critical to finding real redress for women's rights abuses as well as to moving toward the reaffirmation and realization of the universality of human rights.

The debate between Northern and Southern women that took place during these Conferences gave further evidence to the fact that the main categories at the foundations of our political world and our possibilities of understanding the world were being questioned. Different voices questioned the dichotomies of the western conceptual world: nation/state; human/individual/collective rights; citizenship; democracy. These voices, coming from the margins of the western world, reminded us that the global Enlightenment message, linked to development, to the western life style, "just one among the others", has succeeded in "asserting its distinctiveness in a timeless and space-less Universalism that had proved to be a bad Universalism", that the Enlightenment project, with all its good intentions and ideals of universal emancipation, "has turned into a project of domination of the whole world." (GENOVESE, 1995, p. 34). The universal rights project therefore had to be confronted and questioned by these voices that come from different worlds, experiences and cultural contexts.

Violence against women was not the main priority in those years but only one of the issues to be taken into consideration. Later it became one of the twelve critical areas identified during the Beijing Conference in the Platform of Action in 1995. Many years later, at present, violence against women is one of the most difficult, urgent, endemic emergencies in the world, and the order of priorities of the critical areas identified in Beijing has dramatically changed.

One of the main obstacles to identify and legally prosecute all the forms of violence against women is the separation between the private and the political sphere. that same divide that women's practices have challenged since their beginnings.

This challenge is one of the most important foundations of the feminist approach.

## **ON THE ORIGINALITY OF WOMEN'S PRACTICES OF THE SEVENTIES**

As we have witnessed all over the world, in the 1970s, women's practices spread around the world as a contagious illness. There were no militants, no distribution of leaflets, no parties, and no particular efforts to proselytize. Feminism 'caught on' through the reciprocal acknowledgement of the different experiences of individuals who confronted their experiences and tried to recompose the divide between the private and the political world. The message spread out on the basis of generalizations able to embrace the peculiarity of each single experience. Women addressed the "female issue" re-conceiving themselves as autonomous subjects and not as objects of social assistance policies. And this made all the difference: new energy came from this new representation of themselves.

This work of re-conception began in underground groups that were not visible in the classic "civil society" environment or social structure, and in absolutely anomalous forms (e.g. consciousness raising groups around a kitchen table in private spaces in private houses). Exploring patriarchy, women developed a critique of all forms of established power deriving from patriarchy, at all levels, in the social, political and intellectual scene. Moreover, accepting to shed light on their own deep implication within that scene, they started to shed light on the whole organization of social and intellectual life, digging into the complex web of conflicts and complicities that challenge and stabilize the patriarchal system at the same time.

The women's political practices that were behind that 'infection' were forms of practices trying to recompose the analysis of public spaces with private ones. Setting a different positioning of the public and the private spheres they were redesigning that space which can be called the space of bio-politics (AGAMBEN, 1995).

In subsequent migrations, autochthonous and autonomous rebirths, 'feminism' developed and split up into many 'feminisms,' which then transformed and re-invented themselves as they interacted with their different contexts and cultures. The women's movement today is

really global and local at the same time. The fragmentation of the global movement, according to these many contexts and cultures, does not make invisible its common ground of resistance against patriarchy. There are few places on earth that have not been exposed to this 'wave' that allows women to take their lives and their place in history into consideration in a different way.

As stated above violence against women at that time was not the priority as such; however the practices that tried to recompose the private with the political landscape came from the women's bodies, from the spaces where women felt silenced, cancelled, unseen, unheard as women; the spaces that were then called of the 'symbolic violence' of patriarchy: physical and moral violence, and all those difficult hidden and crucial areas of life where women are most present and where it is difficult to separate nurturing, love and care from power and violence.

These spaces are exiled from political definitions of society as well as essential to its existence. From these areas those political practices questioned the origins and the attribution of power, sovereignty, authority. the ways priorities settled : in family, in relationships, and in the public arena. They recomposed spaces kept 'normally' invisible and separated. They questioned the whole basis of the democratic frame as these hidden places of history constitute its fabric without being named and recognized as such. They are as much substantially invisibly included as formally excluded from the *polis*.

The traditional language of politics was also put into question. New forms of political analysis and action emerged. The analysis of the sexual identity and the analysis of the world were carried on together, with a focus on questioning identity, subjectivity, sexual differences, and forms of male and female cultures. In their analytical work, women collectively employed and reinterpreted culture and knowledge, including the corpus of human rights from a great range of perspectives. Women from diverse cultural and academic backgrounds joined forces to carry out this exploration. The challenge was to combine the research on women's forms of knowledge with the political practice of bringing together women from a wide array of cultures and hierarchical positions. Individual researchers attempted to bring the fruit of independent and alternative experiences

into academia as well as in international institutional arenas such as the United Nations .

It was a work that started to redesign the meaning and the spaces of politics and the basic concepts that constitute the conceptual frame of democracy.

The international UN conferences of the nineties were the spaces where this work became visible and effective internationally. Nobody, not the UN for sure, was expecting the affirmative and conflictual power of women and feminist presence.

At that time the focus of women's efforts was the revision of human rights 'borders' and the attempt to fully integrate all aspects of women's lives within them. However throughout confrontations, conflicts and discussions among women's groups, what started as an attempt to integrate women and gender-based perspectives into human rights theory and practices quickly became a radical critic of the paradigms that lie at the foundations of that same theory. The main result of this approach was therefore that, analyzing their own position in the body of rights ,women realized that they had to question all the conceptual framework that holds them and identify what is strategically kept invisible in its foundations. Women's political practices, researching 'full membership,' an extension of the 'borders' of citizenship, led to re-conception. Women asked, in the beginning, to be included in development and the 'universal rights project.' What happened is that, instead, analyzing the reasons for the obstacles that opposed their inclusion, women shed light on some of the main aspects and contradictions of the notions that are the basis of the development and universal rights project. They had to question the fundamental critical silences in its conceptual frame.

Those practices were perceived as frightening and powerful, but far from the ambiguities that will follow. Later on, the need of the women's movement to be present in public spaces, in politics, where the resistance of patriarchy is particularly strong, led to the 'empowerment project' and, as it 'took over', the interrogation of those hidden primary areas of life that nurture violence and where love and violence are inextricably interwoven, were left behind. With this 'turn' to gain public presence , "normal" given patriarchal hierarchies between public and private was somehow reinstated, and that hidden area where women's rights challenge deeply the notion



of human rights became less central. At that time we were not aware of the implications of that intellectual work of deconstruction, and we were very confident that men would do their part, questioning their patriarchal power, questioning themselves as non-universal subjects, and that even they would feel liberated by the burden that comes with masculine identity. This did not happen; men kept defending their intellectual and social privileges as much as their conceptualizations. The present violence is a clear sign of this global resistance.

Women's work around the issue of violence nowadays has grown exponentially; however, its cultural and political meaning is often partially hidden behind the emergencies and the social practices that are needed to help women out of dangerous situations. This field of work on violence for women and by women is at risk of becoming a new social field, a specialized field of work belonging to social assistance where its deep meaning disappears. A broader political and cultural approach is needed, an approach able to take this issue out of the technicalities of "specialized" fields. Violence against women, becoming such a priority, obliges us to look again more globally at the complexity of patriarchal powers, and even at women deep implications in them. Public women's achievements have to be reconnected with what was left unresolved in the more hidden private spheres of women's (and men's) lives. It is a civilization issue, not a social assistance issue.

This is why it is necessary as much as it difficult, to go back to those forms of analysis and interrogation that keep together the private and the political areas of life, to never forget women's experiences as an open question to all institutional bodies. Beyond cultural, geographical, social, economic, religious differences women occupy a common structural essential position in all societies. To bring about change in this field it is critical to see that violence against women is not some marginal, "cultural practice" in underdeveloped places. Such violence is a key mechanism for maintaining domination over women in virtually all societies: it is the one real international transcendent issue that crosses all borders: geographical, cultural, economic, social, religious. It could be different in many aspects and forms but not in its essence: it is patriarchal power that is at stake. And symbolic violence, that advocates the legitimate representation of events to one subject only is the most insidious and violent as it deprives

women of their own way to “see “ the world, to give their own meaning to events. Violence against women is a profound challenge posed to men and patriarchal civilization. The difficulties that normal legal procedures find in implementing gender rights show how much the interrogation posed by women’s rights to the concept of human rights is still open.

## **VIOLENCE AGAINST WOMEN IN PUBLIC HEARINGS: THE COURTS OF WOMEN AND THE WOMEN’S TRIBUNAL IN FORMER YUGOSLAVIA**

As an example of this work let me describe The Asian Women Human Rights Council (AWHRC) initiatives as an interesting approach of a women’s practice that influenced Cairo and Vienna and all the UN Conferences on Human Rights. They contributed to change the wording of official documents (‘women’s rights are human rights’; ‘women’s right to self-determination in relation to reproductive choices’) but also to the radical questioning of the Human Rights conceptual frame.

The AWHRC, based in India, together with other locally based groups initiated in the nineties a series of public hearings on violence held before a ‘Court of Women’. World Courts of Women promote symbolic processes that hold unofficial public enquiries into crimes against women, including the violation of their basic human rights. The phrase ‘public hearing’ implies a space where voices traditionally hidden in the private sphere (in particular with respect to sexual crimes) can be listened to in public. The main function of these hearings is to allow an opportunity for participants to relate experiences that are not part of public discourse but also to reinforce women’s subjective perception and interpretation of violence. They challenge the dominant public discourse by pointing to contradictions between principles of human rights and the experiences of women. The ‘Courts of Women’ deal mainly with those women’s rights that are connected with sexuality, giving a forum to those people and those areas of human life that are traditionally excluded from formal political and legal proceedings. Organized around particular topics relevant to the hosting country, these unofficial public enquiries highlight the injustices and the abuses that women face. They also raise awareness, record injustice and human rights violations, give voice to marginalized women, develop alternative visions and strategies for the future, provide a resource for

women's movements to hold governments or other entities accountable to human rights standards and international laws.

These public hearings are based on the evidence that violence nowadays strikes women particularly and on the idea that violence against women reveals the most obscure roots of any violence. The public hearings have taken into consideration different types of private and mass violence in the North and in the South of the world. This analysis of violence tries to understand the reasons for growing sexual abuse but connecting it to the context of globalization, of new economic policies, and too quick processes of modernization. The forms of this violence can be different in the rich societies of the North and in the poor countries of the South: domestic violence, intimate homicide, sexual traffic in the North; infanticide of baby girls, death for dowry, sexual trade and genital mutilation in the South but the increase and the meaning of this violence have the same origin and show the same intensity.

The 'Courts of Women's' allude to the fact that this public hearing on justice issues implies the need to revise the same concept of justice and the paradigms that form the basis of legal corpus of rights .

Through the voices of victims, 'women of law', artists, inventors of ways of survival and resistance, both individual and collective, violence against women enters the public space, that violence has in every culture always been considered "natural" or part of the private world and, as such, outside law and even outside the possibility of being legitimately named. These voices, heard collectively in a public arena, give women a new way of conceptualizing what has happened to them, give them strength, and cast a different light on universality of rights and civilization.

One of the most important (and among the first) hearings was that of the "comfort women" of the Japanese army who, during the Second World War, used to kidnap young women in Asia to 'serve' the soldiers. After the war many of these women who "served" as prostitutes for the army were killed; others were sent back to their home countries. For reasons of the "honour" of their families, however, many of these former "comfort women" ended up hiding for the rest of their lives. Only one of them bore witness in the 'Court of Women' on what had happened to her during the war. After this, other women decided to break silence, to give evidence about this side of war.

Since then many of these hearings, almost 40, have taken place all over the world, giving a different narrative of some of the main dramatic episodes or forms of individual or collective violence against women in different regions of the world. They always try to keep together all the aspects of the different rights and the contexts in which the violations were taking place, try to reconnect in a different way the violations to economic and cultural context: from honour killing in the Middle East, to the new East Indian surges of wife killing when a dowry is finished, to the murdering of girls in utero, to the witch hunt, reemerging in Africa after the disasters where climate change and the “hand” of human greed go together, to mass rapes in the former Yugoslavia.

The effect produced has been huge. It has allowed other women to speak up, sometimes after many years . It has focused the attention on similar atrocities at other sites, such as the Gulf and the former Yugoslavia war; it has reopened the search for the hidden links between apparently very different phenomena as prostitution, organized prostitution as part of the military, on women and military institutions.

These courts show also the contradiction within a notion of democracy and citizenship based on individual rights and on gender blindness. They question the relationship between individual and collective rights, between universal and women rights. The given/normally assumed links between land, nation-state, individual and collective rights are broken today. The gender neutral subject of Enlightenment who is conceived within the corpus of Human Rights doesn't exist anymore.

These hearings radically challenge the legal conceptual framework, in the same way as did the idea that “women's rights are human rights”, adopted in 1993 at the UN Conference on Human Rights in Vienna. They start first of all to foster demands to revise legislation and international conventions. Secondly, these hearings take advantage of the problems that this ‘extension’ creates from a legal point of view in order to question the conceptual presuppositions and the internal logic that exclude women. Women have never been either subjects or interlocutors in the ‘original brotherly agreement’ from which laws originate.

It is a triple re-configuration among different kinds of knowledge, among voices that come from different social and cultural places: between the personal and the political spheres, between the public and the private

spheres, and between the history of single individuals and macro-history. This 'living practice' redefines politics also crossing the ethnic and political divide. As Corinne Kumar (1995) writes in the beautiful texts called : "Sacred Mountains everywhere": "the aim is to transform the dominant paradigm of politics."

Women remind the Aristotelian distinction – opposition between pure life – existence, pertaining to nature, of which women are the living reality and the symbol, and the political life, reinvented by men in an act of self-recreation to 'jump out' from limitations that nature imposes: time, birth, death. This distinction is still at the basis of human rights as we know them.

The conceptual challenge of questioning from women's experience the main human rights framework goes further: it reaches the definition and redefinition of the concepts of peace and war, and the notion of justice itself.

One of the main achievements of this work was the Tribunal held in the former Yugoslavia in 2015. This initiative was the result of the fact that, after Milosevic's death, without trial, despite the International Court held in Hague had recognized rape as a crime against humanity, and despite other more formal/institutional initiatives were taking place, women in fact realized that silence and impunity were the norm, the "normal" way to deal with the past. Women victims of war were silenced, left alone with their pain and their shame, forgotten. Each State of that area continued to protect its own criminals and their crimes against women still considering them national heroes of war.

The initiative was promoted in 2010 on the example of the Courts of Women, to provide space for women's voices and testimonies on their experiences and resistance to violence. To organize the Tribunal 11 regional seminars, 102 public presentations in 83 towns in the region, and 25 documentaries on the topic of violence against women during the wars and peacetime in the former Yugoslavia were held. And the Tribunal was organized *together* by women's groups from all the regions that had been in war also from opposite sides: from Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Slovenia, and Serbia. It took five years to organize this Tribunal. The Tribunal focused on war crimes committed against women during violent conflict in the region in the 1990s. Survivors

of violence and sexual violence spoke out about their experiences. They also spoke about violence they have experienced in the years following the wars. They analyzed the relationship between nationalism and the “ethnic” rapes in Yugoslavia. Despite the internal tensions and differences, women worked together even while belonging to nations at war, dealt with their conflictual position and looked for their commonalities. The fact that such different women could meet and tell their own stories, their experience of conflict, the ways in which they saw themselves as members of a land, of a nation, of an ethnic group allowed a re-definition of the very deep meaning for an individual of belonging to a nationality. Every single woman, when re-defining the enemy/rival, had to take a stand with regard to her own society, often disclosing first of all the invisible violence against women that hides in every society and the ties that hold it up and hold her up. Nationalism ‘melted’ during this process. From women who experienced the different wars in former Yugoslavia, new ways of reading, imagining and dealing with the ties with their ‘motherland’, with peace and war, have come out, beginning from their daily lives where peace and war start and end. The understanding of those ties can explain to us why in war times women become, beyond the ‘natural violence’ of wartime, ‘essential’ victims as symbols of a whole nation, as it happened in that area of the world. This particular way of looking at the surrounding world from the position and point of view of women allows a different focus on things; this way of reading oneself and reality can change the definition of events, the direction of interventions and the definition of priorities, and deepens the perspective through which to look at the whole body of human rights. The focus on dynamics of private violence in peace times changes, for example, the definitions of “peace and war”. When war is over and damaged men come back, women say: “this is the beginning of another hidden and invisible war taking place in our homes”. There are too many new victims in this “peace” that comes after a war. And many veterans’ wives in other very different countries can recognize their experiences.

The idea of justice is also redefined. In the former Yugoslavia the women advocated for judicial reform to protect survivors and strengthened feminist networks in the region. After systematic regional and local hearings they prepared a “Platform for Justice”. This “Platform of Justice” proposed a “feminine idea of justice as a result of a harmonization between emotions and principles”, not only as a result of objective facts quoted

in war tribunals where “only conflicts and ideologies” are discussed and women’s stories of daily resistance are neither considered nor recognized. The organizers of this process still tell us, almost five years later, that many women are starting to speak out only now.

## **PERSPECTIVES FOR THE PRESENT TIMES**

The fact that, even in the case of the ex Yugoslavia, where the International Court of Justice in the Hague was operating, the women considered they had to set a separate women’s court tell us how complex this process of really recognizing that women’s rights are human rights, could be.

It is out of question that the Vienna Conference started a process of change of accepted norms and analysis on gender violence, expanding the situations in which this particular form of violence is understood and prosecuted as a violation of human rights ; that it succeeded in ending the invisibility of abuses in the private sphere and challenged the failure of the international community to address different forms of gender-based violence; that it contributed to end impunity for gender violence and was able in general to mainstream a gender perspective across all human rights systems, UN treaties, both international and regional.

All implementations however recognize the need to address the root causes of this violence.

The problem is that the redefinition of human rights and women’s rights implies a recomposition of the split that has separated what is considered public from what is considered private in human lives. And how this attempt enters the area of law implementation has found, obviously, enormous difficulties as the corpus of human rights is based on basic assumptions where this divide is theoretically central.

Moreover , despite achievements and many positive movements in women’s positions in the world, too many structures remain unchanged. A contraposition between public achievements and intangible private patriarchal attitudes is still at work. Patriarchy has been revealed and exposed but also is trying to react very strongly. Women who have gained ‘citizenship’ and representation in politics or in their jobs continue to

experience marginalization, or feminization, or continuous distortions of the meaning of their words. Women have still to face segregation and/or co-optation. They are still used as “female support” or “care-givers” in action to political parties or social movements or systems undergoing some difficulty. Sexism inhabits strongly social movements .

In the last years we have witnessed a growing process of erosion of the conditions for the full expression of human rights. The gap between recognition and realization of human rights has widened in daily life. Today even the basic notion of human right, that was taken for granted, after its universal declaration, is challenged.

In this context of general regression the effective defence of women’s rights is made not only more difficult but even more invisible.

I was writing in the nineties: “The ‘normal’ course of events tries to keep unchanged the hidden structures of society. Women are today much more aware of the crucial nature of their position, of the importance of their contribution to the economy, of their roles in society, of their work, at material, social and symbolic levels. Some of their rights are recognized .But this is also the time when women as a totally ‘flexible variable’ in economy and society are again most needed. The global restructuring in the organization of global economy, in the present capitalistic and patriarchal situation means that women are asked to increase their availability, their material and mental work as well as their ‘shock absorption’ function at all levels. Hence, their stepping out by their own autonomous initiative from the role which has been apportioned to them, both in the traditional and in the modern societies, both in private and in public spaces, is seen as an unacceptable attempt to shirk their ‘duty’, thus disrupting society’s traditional balance. Those simple movements that advocate a change in their position are perceived as too dangerous, threatening to disrupt the whole structure of society. Their “natural” social role, ‘flexibility,’ their total availability as mothers, nurturers, sexual partners, helpers, is not granted, and not given by ‘nature.’ In more traditional societies pure oppression and repression are still the way to keep women in their places. In modern societies new women’s awareness seem to be more included. In reality the effort is not to allow the new women’s awareness to touch old and ancestral balances in the personal and the public organization of life and society. This is why when it is said that in this modern world is that



“feminism is obsolete, as women already have reached what they wanted” is only a strategic lie. Everything seems to change but, as the last work of Pierre Bourdieu, ‘La domination masculine,’ (1999) has underlined, the fundamental importance of the submission of women continues to be ‘a must’ and “a need” for male society, both in a ‘primitive’ society as the Berbers of the mountains of Morocco and in a post-modern society like the United States. The violence that hits women’s bodies tells us how women’s bodies continue to be charged with men’s imaginary needs and meanings, rooted in a deep unconscious structure. This imagery works outside the control of intelligence, rationality and will. There is an untouched deep level of patriarchy, where women are symbols of a deeper order, whose slightest movement threatens individual balances and the basis of civilization. We were underestimating the level of violence that the attempt to touch these balances can develop both in social and personal settings. Today the even unforeseen increase in violence towards or against women, both in the North and in the South of the world, is almost unbelievable, and shows its significance. Within different contexts, at different levels and under different forms, both traditional and modern societies express the absolute need to control women’s bodies and choices in different ways (MELCHIORI, 2001).

The possibility to go ahead in defending human rights in general and the principle that women’s rights are human rights lies at the centre of this complex landscape where the increase of an ancient violence inhabits the emergence of a new awareness ‘of women’ and ‘on women’ which seems to be ‘progressive’ for mankind as a whole.

The present historical events, the growing populisms which are able to appeal and to use intersectionality among sexism, racism, classism; which are able to manipulate people’s dreams, unconscious fears, power and need to control where the role of sexism is crucial, push us again to rethink globally the issue of the roots of what is defined as political space, which has to be re-conceptualized in order to reintegrate the relationship between what is classically defined as political and the deep currents that inhabit human beings. The issue of women’s and human rights is central in this process.

The creative women’s practices of the seventies still disclose future directions and bases for women’s knowledge and politics, opening a path

to the redefinition of the political spaces of our times. Only from there can we understand what is going on nowadays in the underground of history, and imagine a future.

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