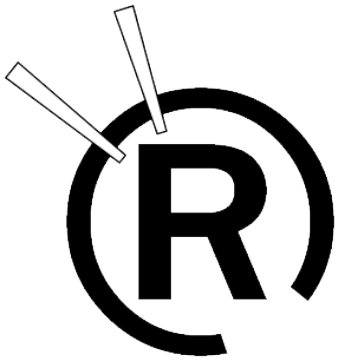

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The ideal-realism of Georges Gurvitch

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In this article we would like to concentrate on the figure of Georges Gurvitch[1]. Gurvitch developed a considerable body of work in the field of political philosophy, legal science as well as sociology[2]. But he did not limit himself to theoretical work: he also sought to intervene in and influence the social and political evolution of his time. Thus, while in exile in New York during World War II, in 1944 he wrote *The Bill of Social Rights* (*La déclaration des droits sociaux*[3]), whose purpose was to inspire the constitution of the French Fourth Republic. It is this form of intervention that we would like to focus on here. If it deserves our attention, it is because, beyond its mere historical interest, it allows us to readdress the question of the intellectual intervention of the philosopher in the social realm in an original way. What is unique in Gurvitch's intervention in the social realm is that it is motivated by a genuine ambition to go beyond the aporia of a purely ideal approach based on the illusion of the omnipotence of ideas, all the while refusing to sacrifice the desire to strengthen the "hold of the ideal over the real". Neither purely ideal nor purely real, Gurvitch qualifies his method as an "ideal-realism". As we shall see, Gurvitch's aim in *The Bill of Social Rights* is to render possible a more effective hold of the ideal over the real.

[1] A longer version of this article has been published in French under the title "L'idéal-réalisme de Georges Gurvitch", in M. Maesschalck & A. Loute (eds.), *Nouvelle critique sociale, Europe-Amérique Latine, Aller-Retour,* Monza: Polimetrica, 2011, pp. 387-419. It can be consulted in open access on the website of the publisher (www.polimetrica.com). The authors would like to thank Joseph Carew for the translation of the current text.

[2] For a general introduction to the work of Georges Gurvitch, we refer the readers to the following books: R. Toulemont, *Sociologie et pluralisme dialectique*, Louvain/Paris: Nauwelaerts, 1955; J. Duvignaud, *Gurvitch*, Paris: Seghers, 1969; G. Balandier, *Gurvitch*, Paris: PUF, 1972; R. Swedberg, *Sociology as Disenchantment, The Evolution of the Work of Georges Gurvitch*, Atlantic Highlands: Humanities Press, 1982; F. Saint-Louis, *Georges Gurvitch et la société autogestionnaire*, Paris: L'Harmattan, 2005; J. Le Goff, Georges Gurvitch. Le pluralisme créateur, Paris: Michalon, 2012. See also Gurvitch's intellectual autobiography "Mon itinéraire intellectuel ou l'exclu de la horde", in *L'homme et la société*, n° 1 (1966), pp. 3-12; "My Intellectual Itinerary or 'Excluded From The Horde'", in *Sociological Abstracts*, 17/2 (April 1969), pp. i-xiii.

[3] *La déclaration des droits sociaux*, New York: Editions de la Maison Française, 1944. In 1946, the book was republished with some slight modifications (Paris: Vrin) and then published in English (*The Bill of Social Rights*, New York: International Universities Press, 1946). Here we will refer to the recent reproduction of the 1946 French edition: G. Gurvitch, *La déclaration des droits sociaux*, preface by C. M. Herrera, Paris: Dalloz, 2009.

However, we should stop ourselves from limiting Gurvitch's intervention to the mere act of writing of this text. *The Bill of Social Rights* has to be read alongside his critique of the individualist position in legal science and his philosophical justification of what he calls "legal transpersonalism". In order to come to terms with the multi-faceted nature of Gurvitch's work, in this article we will show that his intellectual intervention must be understood as the completion of a three-fold task. We will take seriously Gurvitch's claim that, if a Bill is to be effective, "il faut un idéal, une description des obstacles à sa réalisation et une technique particulière tenant compte des deux"[4]. In the first section, we will present Gurvitch's critique of legal individualism. He tried to demonstrate that the individualistic prejudices of legal science drive a wedge between the concepts of jurists and the real life of law. In the second section, we will discuss Gurvitch's attempt to justify legal transpersonalism. We will see that, according to him, the essence of democracy must be understood as the institutionalization of social law. Social law therefore comprises an ideal, which Gurvitch calls transpersonalism. It is not until the third and last section that we will focus on *The Bill of Social Rights* as such. Our thesis is that this text realizes the critique of the individualism of legal science and its concomitant justification of the ideal of transpersonalism by proposing a technique, which allows the implementation of this ideal in the social reality of his time. First of all, let's start with the description of the reality of social law.

1 The critique of individualism in legal science

In the 30s, Gurvitch's judgement on the state of the legal science was without mercy. An abyss had arisen between the legal concepts and the reality of the legal life of his time, an abyss mainly caused by the essentially individualistic bias of legal science[5]. For Gurvitch, individualism in legal science brings together a series of legal concepts which could be said to include, but are not limited to, the following principles[6]: the sovereign and autonomous individual constitutes the supreme end of law; the only function of law is the negative limitation of external freedoms of individuals; the individual on a small scale (man) or on a large scale (the State) is the sole basis for the binding force of law; and the only possible manifestation of the legal community is the submission of a multitude of isolated individuals to a general and generic rule. This constellation of ideas shows that from an individualist standpoint it is impossible to grasp new and emerging forms of legal

[4] G. Gurvitch, *La déclaration des droits sociaux*, p. 38. Proposed translation: "we need an ideal, a description of the obstacles to its realization, and a particular technique that is able to take the two into account".
[5] See G. Gurvitch, *L'idée du droit social. Notion et système du droit social, Histoire doctrinale depuis le 17e siècle jusqu'à la fin du 19e siècle*, Paris: Editions Sirey, 1932, p. 1.
[6] See G. Gurvitch, *L'idée du droit social*, p. 5.

institutions. Thus, in the field of labor law[7], many authors emphasize the increasing role of non-state based, "unofficial" law emerging out of the spontaneous organization of groups composed of the parties concerned and their agreements. As such, this law could neither be produced by individuals between themselves, as in the case of a contract, nor by the "the individual on a grand scale" that constitutes the State, but rather arises from the group itself. This law refers to the objective element of the union of the parties concerned.

Gurvitch sees in "collective labor agreements" an example of institutions, which pose insurmountable difficulties for an individualist conception of law. First and foremost, if it is made between two parties (for example, an employers' union and a trade union), the agreement applies at the same time to these parties and individually to all the members that make up each group. In addition, the agreement not only applies to individual members of the groups of the contracting parties, but also to third parties (for example, non-union workers). Finally, collective labor agreements entail the nullity of all individual contracts, which infringe upon the clauses of the collective agreement. As Gurvitch emphasizes, these observations have led a number of scholars of labor law to see in these collective agreements an "objective autonomous law". Such a law does not find its foundation in the will of the people nor in the commanding will of the State. Gurvitch also discusses various innovations of his time such as the "workers' councils" establishing "workers' control". These innovations also pose a problem for a legal science based on individualism.

Gurvitch's thesis is that these insurmountable problems can only be resolved by incorporating the concept of "social law". By social law Gurvitch means:

> "le droit autonome de communion par lequel s'intègre d'une façon objective chaque totalité active, concrète et réelle incarnant une valeur positive, droit d'intégration […], aussi distinct du droit de coordination […] que du droit de subordination, seuls reconnus par les systèmes de l'individualisme juridique et de l'universalisme unilatéral".[8]

We must determine what Gurvitch means by law of integration. Social law carries out the integration of a totality, a group, through the participation of its members in this whole. For Gurvitch, "le droit social fait participer directement les sujets auxquels il s'adresse, à un tout, qui à son tour participe directement aux relations juridiques de ses

[7] For an in-depth analysis of this question, see G. Gurvitch, *Le temps présent et l'idée du droit social*, Paris: Vrin, 1931, pp. 13-100. In this work, Gurvitch also criticizes individualism in legal science by questioning the legal innovation of his time in the field of international law and the discussions of the sources of positive law.

[8] G. Gurvitch, *L'idée du droit social*, pp. 11-12. Proposed translation: "the autonomous law of communion by means of which each active, concrete and real totality incarnating a positive value integrates itself in an objective way, a law of integration […] [which is] as much distinct from the law of coordination […] as from the law of subordination, the only ones recognized by the systems of legal individualism and unilateral universalism".

membres"[9]. This law integrates a totality, but remains immanent to the members of this totality. Amongst themselves, members have "relations of communion"[10], which Gurvitch symbolizes by his use of the pronoun "We", instead of using oppositional or subordinating relationships (I, You, He/She). The expression "objective integration" means that the basis for the binding force of social law is objective and impersonal. Authority is not derived from an aggregation of wills nor from the will of the individual on a grand scale, but rather from the objective fact of union, namely from the "We". When referring to this objective and impersonal authority, Gurvitch uses the expression "normative fact".

The individualist position in legal science is not only unable to account for these legal innovations, but also for more traditional legal institutions. We even need the concept of social law in order to understand the kinds of relations brought forth by private property law in a capitalist system. The reason for this is that, for Gurvitch, the law of coordination and subordination must be understood as a distortion and perversion of social law[11]. In order to illustrate this point Gurvitch uses, amongst others, the example of a factory environment[12]. When a worker is hired at a factory, he is subject to a whole series of obligations regulating the internal organization of the plant: work hours, various requirements for discipline and expectations of moral conduct, etc. These are "beyond consent" and fall outside of any contract. Gurvitch raises the question of the legal basis for the subjection of workers to these obligations. Such a base cannot legitimately be found in the property rights of the owner because such a right can only be exercised on objects and not people. For Gurvitch, the only legal basis for such workplace regulations is to be found in the derivation of social law from the legal totality that the factory as such constitutes. Thus, by enacting or establishing the law, the owner sets himself up as the legitimate representative of this autonomous totality. But, by usurping the title, the boss in reality distorts the social law that integrates the social totality that is the factory by making it a matter of individual property. The power he exercises, rather than being based on social law, is based on ownership. He considers the workers as things he owns.

This thesis of a perversion of social law in the case of the law of subordination present in Gurvitch's legal philosophy refers to the opposition between, on the one side, the infrastructure of an unorganized community and, and on the other, the superstructure of a superimposed organization[13]. For Gurvitch, any community, any social group, is composed of these two elements. The first is the "We", namely the "normative fact" of the objective union. In relation to this first "stratum" or "layer" of the social group Gurvitch

[9] G. Gurvitch, *La déclaration des droits sociaux*, p. 75. Proposed translation: "The social law lets the subjects whom it addresses itself directly participate in a whole which, in its own way, participates directly in the legal relationships of its members".
[10] See G. Gurvitch, *L'idée du droit social*, p. 18.
[11] See G. Gurvitch, *L'idée du droit social*, p. 12.
[12] See G. Gurvitch, *Le temps présent et l'idée du droit social*, p. 66.
[13] See G. Gurvitch, *L'idée du droit social*, pp. 28-30.

talks about unorganized social law. The second element is the superstructure of the social group. It is here that the social law integrating the group is organized. This organization can take various forms: collaborative partnership, subordinated association, etc. In order to be a real, veritable social law, organized social law —the superstructure— must be "entièrement fondé et pénétré par le droit social inorganisé, qui se dégage de la communauté objective sous-jacente"[14]. So, when a superstructure takes the form of a hierarchical organization, social law is perverted into an individual right of subordination. As is the case for collective agreements under capitalism, it is thereby cut off from the objective community from which it emerges.

2 The justification of social law: the ideal of transpersonalism

As we said in our introduction, Gurvitch does not limit himself to a critique of the individualism characterizing legal science. He also attempts to justify social law from the perspective of political philosophy. It is this second aspect of his work that we will now focus on. In 1929, Georges Gurvitch published an article titled "Le principe démocratique et la démocratie future"[15] where he developed his political philosophy. In this article he seeks to define the essence of the idea of democracy. For him in the history of philosophy the concept of democracy was developed as a synthesis of three basic elements: the idea of the sovereignty of the people, the idea of equality and the idea of individual freedom. His goal is to overcome the inherent limitations of the first formulation of a theory seeking to balance these three elements, which came into being in the seventeenth and eighteenth centuries within the context of individualist thinking. For Gurvitch,

> "il s'agit donc précisément de savoir si l'individualisme unilatéral ressort de l'essence même de l'idéologie démocratique, ou si, au contraire, il ne fut qu'un prisme historique qui en détermina la réfraction [...]. Il importe de savoir s'il est permis d'en rendre responsable la démocratie et si dépasser l'individualisme équivaut à dépasser la démocratie"[16].

[14] G. Gurvitch, *L'idée du droit social*, p. 30. Proposed translation: "completely and utterly founded and penetrated by unorganized social law, which itself emerges from the underlying objective community".
[15] G. Gurvitch, "Le principe démocratique et la démocratie future", in *Revue de métaphysique et de morale*, 36, 1929, pp. 403-431.
[16] G. Gurvitch, "Le principe démocratique et la démocratie future", p. 407. Proposed translation: "we must therefore know whether unilateral individualism emerges from the very essence of democratic ideology, or if, on the contrary, it was only an historical prism that determined its refraction [...]. It is imperative to know if democracy is to be held responsible for individualism and if going beyond individualism is equivalent to going beyond democracy".

As we have mentioned, for Gurvitch individualism posits the sovereign and autonomous individual as the foundation and the ultimate end of law[17]. This is not an individual entangled in the concreteness of the conditions of its existence, but rather a "représentant nivelé du genre abstrait de l'humanité en général"[18]. At the heart of this conception is therefore an abstract individual devoid of everything that makes up the singularity of its individuality. It is a metaphysical essence asserted as a fact, which allows us to establish the identity between freedom and equality. Furthermore, according to whether the emphasis is placed on freedom or equality, there are two possible variants of this fundamental principle[19]. Veritable individualism asserts that freedom is the inalienable expression of the essence of each individual, which only morality can deal with, and thereby reduces law to the external limitations that different free individuals mutually impose upon one another. In the context of a unilateral universalism, on the other hand, the emphasis goes on the idea of equality as already given because of the universality of the essence of humanity. However, unilateral universalism ultimately leads to a reduction of individual singularity to an abstraction: purely quantitative equality amongst different individuals. For Gurvitch, unilateral universalism completely confuses Justice with the moral ideal, but without Justice being elevated to the grandeur of the moral ideal. It is rather the latter that is downgraded, brought down to a lower level. Thus thinkers such as Plato and Hegel wrongly attribute to the state and its laws the absolute value of the moral ideal. If the starting point of universalism is thus the opposite of the starting point of individualism, their conclusions are nevertheless similar: whether we are dealing with a Justice that subordinates an individual to another or a Justice that subordinates everyone to the State, "cette Justice est menacée une fois de plus d'être confondue avec la force"[20].

Consequently, the ideas of law and democracy themselves are endangered when they are based on individualistic principles. For Gurvitch, the condition of overcoming the impasses brought forth by individualism and unilateral universalism is to create a new conception of law. We must think the possibility of a law which, all the while introducing a quantitative dimension, does not reduce the concrete singularity of individuals to a purely quantitative equality. Equality must rather be seen as the equivalence of individuals in

[17] When Gurvitch criticizes individualism as unable to account for the multifaceted essence of democracy, his main interlocutor is Jean-Jacques Rousseau. See, for example, G. Gurvitch, "Kant et Fichte, interprètes de Rousseau", in *Revue de métaphysique et de morale*, 4, 1971, pp. 385-405 (first published in *Kant-Studien*, 1922); G. Gurvitch, "Rousseau et la Déclaration des droits. L'idée des droits inaliénables dans la doctrine politique de J.-J. Rousseau", in G. Gurvitch, *Ecrits russes, Ecrits de jeunesse*, trans. C. Rol and M. Antonov, Paris: L'Harmattan, 2006.

[18] G. Gurvitch, *L'idée du droit social*, p. 5. Proposed translation: "a levelled out representative of the abstract species of humanity in general".

[19] See G. Gurvitch, *L'idée du droit social*, pp. 97-98; G. Gurvitch, "Le principe démocratique et la démocratie future", pp. 416-417.

[20] G. Gurvitch, *L'idée du droit social*, p. 98. Proposed translation: "we once again risk confusing Justice with force".

relation to the whole. Everyone's concrete vocation must participate in the same way, as an essential element, in the formation of the concrete universality of the totality. Correspondingly, we need to think the possibility of a law, which, under the protection of a quantitative freedom, at the same time renders possible the flourishing of the material and qualitative freedom of each concrete singularity. For such a synthesis between the freedom of concrete singularity and equality as equivalence to be possible, the third element of the essence of democracy, the idea of the sovereignty of the people, must be understood as the idea of a "tout organique qui puise en lui-même le principe de sa vie"[21], of "une totalité concrète qui se détermine elle-même"[22] and not as an expression of the rational will universally present in every individual. Here we come across the idea of a concrete totality and, which is intrinsically correlated to the former, the idea of social law.

How can the introduction of this quantitative element peculiar to law allow it to found and maintain the deployment of qualitative freedom and equality? A first answer is provided by what Gurvitch calls "legal pluralism", which is made possible by the establishment of social law. We have seen that social law governs concrete totalities without appealing to the state as the sole source of norms. Thus, a multiplicity of totalities may establish themselves in social space by counterbalancing one another and working together. According to Gurvitch, the future of democracy is to be located precisely in the universality and multiplicity of its faces. In fact,

> "si la démocratie a des faces multiples, l'individu lui-même s'en trouve qualitativement enrichi: à la multiplicité de plans dans lesquels se développe la démocratie répondent des faces multiformes de la personnalité"[23].

Thus, the quantitative element introduced by social law promotes freedom as a creative singularity by establishing a plurality of sites where it can unfold as truly equivalent to other freedoms in relation to the whole.

From what we have just shown, it follows that any attempt to find a balance between the elements making up the essence of democracy, which wants to truly achieve a synthesis between individuals and universalism leads to the necessity of social law. We have seen that social law is the law by which every concrete totality is able to integrate itself in an objective manner. It is based on the "normative fact" of a community. We have already seen that if, on the one hand, the whole is irreducible to all its members, on the

[21] G. Gurvitch, "Le principe démocratique et la démocratie future", p. 407. Proposed translation: "organic whole which finds in itself the principle of its life".
[22] G. Gurvitch, "Le principe démocratique et la démocratie future", p. 409. Proposed translation: "a concrete totality which determines itself by itself".
[23] G. Gurvitch, "Le principe démocratique et la démocratie future", p. 422. Proposed Translation: "if democracy has multiple faces, individual themselves are thereby enriched qualitatively: the multifarious faces of personality respond to the multiplicity of ways in which democracy is developing".

other it is immanent to its parts and constituted by their collective actions. Because of this "continual transition" between the individual and the whole, Gurvitch defines its own philosophical position as an "ethical transpersonalism". As Gurvitch lucidly explains:

> "Dans cette conception le tout étant distinct de la somme de ses membres, ne leur est pas transcendant et ainsi ne s'oppose à eux ni comme objet extérieur ni comme une personnalité supérieure (personnalisme hiérarchique); l'élément qui dépasse les "moi" personnels n'est ni objet ni personne, mais l'activité supraconsciente (Nous) à laquelle sont immanentes par l'intermédiaire de l'action toutes les personnes; cette activité, à son tour, est immanente à ces personnes et les pénètre. Dans ce sens de compénétration réciproque entre l'activité supraconsciente et l'action consciente, le tout transpersonnel, symbolisé dans le Nous, peut être caractérisé comme une totalité immanente"[24].

By this idea of a super-conscious activity, which he sometimes calls "a flood of pure superconscious creation", Gurvitch designates the creativity specific to collective action as produced by individual actions which are absolutely irreplaceable, the latter being, in turn, rendered possible by their very participation in this collective action. Thus the point of view of an individual can be synthesized with the point of view of the whole: the idea of "We" allows Gurvitch to show the dynamic relation of mutual and immanent determination that exists between the two.

We can begin to see that a shift has occurred with regard to the critique of legal individualism as we have presented it in the preceding stage of our argument. Speaking of social law, we are now at an ideal level. In fact, "la synthèse proprement dite en une totalité immanente de l'un et du multiple, de l'individuel et de l'universel, ne peut être acquise que dans l'idéal moral"[25]. The introduction of this ideal brings us back to the question of the relation between law and morality. Indeed, the moral ideal of a creative activity in which the singularity of personal actions is situated in a relation of reciprocal production with a transpersonal creativity remains unrealizable at the empirical level because at this level the conflict between individual values and universal values underlies every possible manifestation of the social. It is at this level that Justice intervenes: "la Justice est appelée à *concilier* d'une façon *préalable* les conflits réels entre les valeurs

[24] G. Gurvitch, *L'idée du droit social*, p. 10. Proposed translation: "In this conception, although distinct from the sum total of its members, the whole is not transcendent, beyond them, and is therefore not opposed to them as an external object or as a superior personality (hierarchical personalism); the element which exceeds or goes beyond each personal 'I' is neither an object nor a person, but a superconscious activity (We) in which, by the intermediary of action, every person exists immanently; this activity, in turn, exists immanently in these persons and penetrates them. Because of this reciprocal interpenetration between the superconscious activity and the conscious action, the transpersonal whole, symbolized in the We, can be characterized as an immanent totality".

[25] G. Gurvitch, *L'idée du droit social*, p. 17. Proposed translation: "the veritable synthesis in an immanent totality of the one and the multiple, of the individual and the universal, can only be accomplished in the moral ideal".

transpersonnelles et personnelles"[26]. Establishing a law capable of reconciling personal and transpersonal authorities is indispensable for the formation of these "We's", which are now understood as the element of the ideal inscribed in the essence of the democracy. Only by social law can these "We's" be established in reality insofar as these "We's", even while generating or producing it, found their very existence on it.

Gurvitch therefore not only mobilizes the concept of social law in an endeavor to describe the reality of law, but also in an endeavor to found the essence of democracy. If these two paths take us to the same idea of social law, the first one leads to the acknowledgement of social law as a fact expressed in the spontaneous life of law, while the second one presents it as an ideal to be instituted into the social if one still wants democracy to have a meaning and a future. The problem that arises now is to know whether these two moments are sufficient in order for Gurvitch's intellectual work to have a determinate effectiveness in the real dynamics of the institution of social law. On the one hand, it seems that a simple description of already existing forms of social law implies an excessive confidence in the fact that these forms could be instituted through the simple movement of the spontaneous life of law. However, we already know that Gurvitch was aware of the possibility of social law being perverted into an individual law. On the other hand, the mere formulation of an ideal remains too detached from the context where this ideal should be achieved and it is thus unable to grasp the specific obstacles that impede its achievement. Oscillating between a realist approach that limits itself to describing already existing realities and an idealist approach that develops an ideal without taking the real conditions of its effectuation into account, one must observe that this intellectual work should renounce any grasp on reality. This is the reason why, in order to rebuild Gurvitch's gesture of intellectual intervention and grasp its full meaning, we must now explore a last level that allows the dialectical articulation of the descriptive and normative dimensions. We are here referring to the *The Bill of Social Rights* considered as a technique and a symbol.

3 The bill of social rights as a technique and a symbol

In this 1944 work, Gurvitch proposes a formulation of social rights which allows groups to be "centres actifs d'engendrement et de défense de leurs droits sociaux"[27]. Rather than formulating rights that ensure we can passively benefit from social polices, social law should allow for the self-government of groups and individuals. *The Bill of Social*

[26] G. Gurvitch, *L'idée du droit social*, p. 99. Proposed translation: "Justice is called upon in order to *reconcile*, in a *preliminary* manner, real conflicts between transpersonal and personal values".
[27] G. Gurvitch, *La déclaration des droits sociaux*, p. 36. Proposed translation: "active centers in the generation and defense of their social rights".

Rights does not limit itself to laying down this ideal in an abstract way. Gurvitch has designed his *Bill* by considering the specific obstacles that the effectuation of this ideal encounters in the social reality of his time. For Gurvitch, in the 20th century these obstacles are foremost present in the "economic feudalism" that the switch to capitalism has led to, that is, in the domination of economic life by great corporate shareholders, trusts, cartels, etc. Gurvitch also cites the following: the autocratic power of employers in factories; the strengthening of the financial oligarchy of banks due to the subjugation of industrial capital to financial capital; the development of technocracy and bureaucracy; various situations where the state becomes authoritarian, etc. This diagnosis leads Gurvitch to qualify his era as the "era of the Leviathans"[28]. Instead of spending a lot of time going into the specific details of these analyses, here it suffices to recall that the force Gurvitch sets in opposition to these obstacles is a pluralist legal technique[29]. This technique would aim at guaranteeing, against these Leviathans, the autonomy of social groups and ensuring that they could act as a means of reciprocal counterbalance through limiting one another. One of the central consequences of implementing such a technique would be the introduction of an Independent Economic Organization, governing itself, that would represent the whole of producers and consumers, and that would act to counterbalance political power.

One question arises. Talking of *The Bill of Social Rights* as a pluralist "technique" that would allow us to bring forth democratic values in reality could appear problematic. What should we understand by "technique"? A knowledge that enables those who take possession of it to create social law? Is this not contradictory with Gurvitch's legal objectivism? According to this principle, the compulsory character of law is not at all based on a Will but rather on the non-personifiable and objective authority of a normative fact. In fact, Gurvitch does not understand "technique" as a means to create social law. In his work *The Idea of Social Law*, he makes an important distinction between primary and secondary sources of the positive law[30]. The former are "normative facts". It is from these facts that law draws its normativity. By secondary sources, one must understand laws, customs, conventions, etc., which Gurvitch calls "formal sources" of law. These sources constitute various "technical procedures" (*procédés techniques*) whose aim is to ascertain and express normative facts. Therefore, by proposing a pluralist technique of implementing democratic values in social reality, Gurvitch does not seek to empower individuals or the State with a technique which would enable them to *ex nihilo* create social law, but rather to offer technical procedures which would render possible the very expression of normative facts, the "We's". In particular, Gurvitch criticizes the absolute

[28] G. Gurvitch, *La déclaration des droits sociaux*, p. 54. The expression is from G. D. H. Cole.
[29] See G. Gurvitch, *La déclaration des droits sociaux,* p. 61.
[30] See G. Gurvitch, *L'idée du droit social*, pp. 132-144.

privilege given by some jurists to the secondary source that is law, the "fetishism of law"[31] which absolutizes a secondary source and makes the State the only source of law. His intervention therefore takes part in the criticism of the domination of a technical procedure which prevents us from even noticing the social law generated by the "We's" and offers new technical procedures to make manifest these normative facts.

This objective of making normative facts manifest can be most clearly seen in the fact that Gurvitch expects *The Bill* to play the role of a "symbol" that would exert an active force on society. Here it is helpful to quote Gurvitch at length:

> "Les déclarations, bien qu'elles paraissent cristallisées, représentent l'élément le plus dynamique du droit écrit. Non seulement elles expriment le mieux le droit spontané, mobile et vivant de la Nation, mais encore elles communiquent ce dynamisme spontané à tout le système juridique organisé, en le poussant vers des transformations consistantes et immanentes. […] Le problème d'une nouvelle déclaration des droits n'est à ce point de vue qu'un aspect du problème général du renouvellement des symboles fatigués, problème si actuel à l'heure présente. C'est à ce prix seulement qu'on peut aboutir à une emprise renforcée de l'idéal sur le réel dont l'humanité a plus besoin que jamais"[32].

The symbolic dimension of *The Bill of Social Rights*, even more than its technical dimension, sheds light on the way Gurvitch conceives of his own intellectual intervention. He does not delude himself about the role a symbolic intervention can play in a dynamic of social transformation. In contradistinction to any sort of idealist belief in some kind of omnipotence of ideas, he understands that his *Bill of Social Rights* must be the expression of an already present reality in the spontaneous life of law. At the same time, and due to his conceptual constructions, *The Bill of Social Rights* allows the actors constituting this reality to reflect upon their action by providing them with the means of fighting against the obstacles impeding its implementation and, amongst other things, against the ideological blockages, which prevent them from recognizing the innovative range of their own creativity. Moreover, Gurvitch's intervention encourages the amplification of this creativity by transferring it to the organized instances of the life of law, which tend to block it because of their fixity.

In this article, we have shown that Gurvitch's ideal-realism can only be understood by recognizing a third level, one between description and justification, as its true core,

[31] G. Gurvitch, *Le temps présent et l'idée du droit social*, p. 10.

[32] G. Gurvitch, *La déclaration des droits sociaux*, pp. 46-47. Proposed translation: "declarations, although they seem crystallized, express the most dynamic element of written law. Not only do they best express the spontaneous, moving and living law of the nation, but they also transfer this spontaneous dynamism into the entire organized juridical system by pushing it towards consistent and immanent transformations. […] The problem of a new declaration of rights is, from this perspective, only one aspect of the general problem of revitalizing worn-out symbols, a problem so relevant at the present time. That's the price we have to pay if we are to succeed in strengthening the hold of the ideal over the real which humanity needs now more than ever".

where theory is indissolubly bound to an intervention. As a matter of fact, by conceiving social law as a technique and expounding it by means of the symbol of the *The Bill of Social Rights*, Gurvitch avoids formulating, in the same breath, an empirical theory or a transcendental theory of social law. Starting from the assumption of already existing social law, he asks what are the conditions for its institution, highlights the technical and ideological obstacles impeding this institution, and then proposes a new technique and new symbols which enable its implementation and open up the space for its amplification. Without ever leaving the immanence of the real dynamics of social transformation generated by the emergence of social law, Gurvitch formulates techniques which, because of their symbolic meaning, allow actors to reflect upon the movement which they take part in.

Gurvitch's intervention however raises a series of questions. What can guarantee the effectiveness of the "active force" which constitutes, according to him, his *Bill of Social Rights*? One must realize that, for Gurvitch, the active force of a symbol depends upon the prior existence of the "We", in that language, by itself, cannot create a normative fact. Only then can symbols take part in its recognition and institution, as well as fight against powers likely to corrupt it. Thus, although utterly significant as an attempt to avoid the pitfall of the omnipotence of ideas, this conception claims that the *Bill*, in order to be effective, depends upon the spontaneity of a life of law, which it does not seem to have any power of acting upon. Indeed,

> "tout en s'appuyant sur l'ensemble des moyens de médiation offerts par les signes et les symboles, la sociabilité par participation dans le Nous reste fondée sur des intuitions collectives virtuelles"[33].

These collective intuitions constitute the first moment of emergence of a "We", the moment which dynamizes all social creativity as such. But what is the nature of these "virtual collective intuitions"? Gurvitch does not seem to give a clear answer to this question. Moreover, the connection between collective intuition and the genesis of the normative fact is not even sought out, and, consequently, neither the roles that the intellectual could play in this process. Without a doubt, this lack stems from the strict application of the principle of juridical objectivism advocated by Gurvitch which excludes any introduction of the figure of the will —whether it be in the figure of the individual will or the will of the state— in the question of the foundation of social law. However, shouldn't

[33] G. Gurvitch, "Problèmes de sociologie générale", in G. Gurvitch (ed.), *Traité de sociologie,* Tome I, Paris: PUF, 1958, pp. 155-251, p. 174. Proposed translation: "all the while relying on the set of the means of mediation offered by signs and symbols, sociability by participation in the We remains based on virtual collective intuitions".

we ask how actors experience the processes of the institution of these "We's", as well as how subjectivities are transformed by participating in these "We's"?[34]

[34] An interesting way of approaching this question has been proposed by Lucien Goldmann. He claims that social life can be accounted for only by considering the two correlated dimensions of the transindividual coherence of a collective subject and of the libidinal investment of the individuals forming this subject. See L. Goldmann, "Structuralisme génétique et création littéraire", in *Sciences humaines et philosophie. Suivi de structuralisme génétique et création littéraire*, Paris: Gonthier, 1966, p. 153.