

FAMILY RIGHTS AND THE CRISIS OF THE WELFARE STATE

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1. There is a significant tendency to view the fight for human rights as a battle aimed at increasing, not so much the quality of those rights, as the number of rights recognised by municipal laws, conventions and international treaties. Often more emphasis is placed on lengthening the list of rights, that is by adding to the traditional rights, “new” rights, rather than on consolidating the rights normally recognised, by establishing a system of effective remedies in order to prevent their regression or their sometimes, inevitable violation.

Therefore, even at important conferences, such as that held in Malta on 30 – 31 October 1995 on “Women of the Mediterranean: Towards Equality and Effective Citizenship – After Beijing”, priority was given to prescribe to those countries in which even the affirmation of principles of democracy and justice poses more problems, which “other” rights they must recognise to be in line with the more evolved legal systems, rather than emphasising on the state of the “old” rights in diverse national realities, for example by inquiring into their more frequent violations, and consider the possible remedies to prevent and fight such violations.

It is essential to aim at a higher level of legal protection of the family, of its members, and in the first place of the woman, in Mediterranean societies. An affirmation of the new rights would be idealistic, without at the same time taking any heed of the fate of the old rights. In other words, without analysing whether these rights, apart from being officially recognised in the national laws, are also being protected in practice.

In the struggle for the affirmation of rights to freedom one cannot invoke homogenous political strategies in regard to factual situations which are different. These differences between the countries of the Northern and Southern shores of the Mediterranean are in this sense emblematic.

The formal recognition of a human right is on the whole an easy task to accomplish, because it is a matter of enunciating a principle, of affirming that one cannot do without that right. But it is less easy to guarantee the exercise of that right, that is to overcome all those obstacles which hinder its effective exercise.

Since today we live in an era where the affirmation of principles in this field are useful only to a certain extent, due to the fact that they have lost their "ideological prestige", once the ideological antithesis between the two opposing systems of society – the capitalist and the communist – has ended, the problem which we have to face is not that of justifying these rights, that is to limit ourselves to proclaim the principles, but rather that of taking the recognised rights very seriously. In other words, to demand their implementation, in the most complete manner possible, and thereby to avoid the risk that the recognition of rights be reduced to a mere platonic affirmation.

Taking rights seriously means to take into account the "history" of those rights, of the past efforts conducted in order to acquire them, and of the oppositions, old and recent, which have delayed their recognition. One has to take especially into account those oppositions which, after the recognition of that right, have succeeded to hinder its exercise, and to distort its contents.

Whilst the recognition of political rights in itself directly affects the balance of power and social order, in the case of private rights (such as rights of the family, or of women, just as in the case of most human rights which are considered to be fundamental), it does not follow that the recognition of these rights would modify the internal balances of the institutions affected by these rights. Once the right is recognised, a way must be found to translate this right into concrete action. Often the social conditions will not be appropriate for such a concrete application; therefore the problem becomes one of modifying these social conditions. For example, the structure of the "democratic" family, based on the consent of its members, is on the whole obvious, and in any case easy to implement in a democratic society, a society in which democracy is considered as a value in every level, by everyone – or nearly everyone. But it is rather more difficult to implement democracy

in the family in an authoritarian society, where the emancipation of the family is not a political objective, where even the family must be an institution which mainly serves the purpose of maintaining the status quo of a particular social system. Consequently, the family unit cannot claim for itself a substantial autonomy in carrying out its traditional duties. In this situation the family is required to teach values and to organise itself in such a manner as to achieve the objectives which are indicated by the State itself. Reforming the family in such a context means affirming values and principles which may appear difficult to be accepted by the prevailing public opinion. Therefore, the reform of the family in such conditions is only meaningful if inserted in a general project of social transformation. In such cases, enacting new laws on the family is not enough. It is necessary that one demands at the same time political liberties, that is, to insist on a redistribution of power in society.

This entails a social upheaval which involves human and economic consequences, besides, obviously, political ones.

Lengthening the list of rights – and to limit oneself only to this aim – is not enough to ensure a better life for both woman and the family. This is proved by the failure of many innovative laws in the field of the rights of the family.

In these last years, there have been not only ordinary laws, but even constitutional laws, which have solemnly enunciated innovative principles in this field. These principles, however, had to wait 10 or 20 years in order to be enacted into laws. This has not taken place in countries of the Third World, but in democratic countries, as for example, Italy. In Italy, it was only after 20 years that legislation was enacted in order to bring family law in line with the principles of the constitution.

This has occurred due to the decisive role played by cultural opposition, arising from a particular concept of the equality between men and women, and consequently of marital and paternal authority.

Many years had to pass before those laws became actually effective, and before there was the availability of the necessary material resources so as not to leave the “new” rights merely on paper.

In short, the rights under discussion pose the problem of their actual implementation. This problem poses more difficulties than the simple legal recognition of these rights.

The implementation of these rights depends not only on the resources available, but also on social consent, on the formation of

an adequate "collective conscience". Such a "collective conscience" is not achieved overnight, merely through the adoption of a high-level political decision. This is so because political parties and movements in this field may be more avant-garde than society.

In other words, rights can be imposed by the highest authorities, but they are implemented only if they are accepted by the people. The problem of guaranteeing the effectiveness of rights is particularly significant in the case of the rights of the family. In fact the rights of the family are also social rights. Their implementation is not only a political matter – that is a question of the relative institutions being geared to allow the exercise of those rights – but a matter of environment, of social culture. In fact, the effectiveness of the rights of the family is also somewhat hindered by the "walls" which surround and protect the family. I am referring not only to the cultural "walls", that is to the walls of prejudice, but also to the true and proper "walls", which do not allow us to observe what is going on inside the family and which protect its privacy; as well as to the absence of an often barely adequate social control on the family as a closed community.

It is a fact that unbelievable violence takes place in the family, without society being in a position to know about it, and consequently, without being able to intervene.

In view of this, it is clearly evident that the enjoyment of certain rights in the family, which are not based on the "consent" of its members, can be very precarious and beyond any type of social control. In this context, certain fundamental rights come to mind, like those of physical integrity and sexual liberty, as well as those rights aimed at a conscious and complete socialisation of the family members. This proves that the recognition of "new" rights and the effective protection of the "old" ones constitute two facets of the same fight for the emancipation of the family.

Let us consider for a moment – though this will be dealt with in more detail later on – the difficulties which arise in the judicial enforceability of the rights of the family. The family is a society based on sentiment. It is understandable that the idea of having recourse to the judge to defend one's rights encounters oppositions of every kind, even in evolved societies, which are definitely pluralistic and democratic. But the lack of judicial protection equates to the practical denial of rights. Therefore, it is necessary to adequately protect the members of the family even on this level.

It is not only a question of increasing the forms of protection of the rights in front of the judge, but of increasing the level of social

education with reference to these rights. If such education is lacking, judicial protection and the ready availability of means to facilitate access to justice alone are not enough.

There is a need of informing the people on the consistency of these rights, to ensure that the guarantees reach the domestic walls, and to protect them even from predictable reactions of social rejection. If this is not done, the rights will remain on paper, even due to a form of tacit renunciation by the interested persons themselves.

These problems concern societies which are homogeneous, or which tend to be homogeneous, and are based on a system of values which is unanimously shared, societies in which the family models itself on a determinate social model, and avoids conflicting with it.

But future societies will be increasingly multi-racial societies, increasingly less homogeneous, and with large ethnic minorities, that is societies which have to deal with different principles and values which are shared by more or less consistent minorities.

Therefore, there will be societies which will inevitably experience significant conflicts in this field, unless there is a process of amalgamation of the diverse cultures or of secularisation within those societies where moral or religious authorities exercise a dominant role in social life and a role of supervision and guidance even in political life. A society which is not secularised will inevitably defend its dominant culture in an intolerant manner, fuelled by a hostile vision of the outside world.

In those places where co-habitation of diverse ethnic groups is not easy, that is in those places where the necessary harmony between diverse cultures and traditions within a social system is lacking, the family can become an unsurpassable bulwark for the affirmation of a real culture of rights. The family could constitute a defence against contamination caused by foreign cultures, by becoming the privileged centre of conservation of traditional values. This renders problematic, for example, the integration of more or less consistent minorities of immigrants in many western societies. But this separation of the family from the rest of society can have negative effects on the unity of the family. One has to envisage the conflict between parents attached to the traditions of their countries of origin, and their children which have been born and have studied in the host country.

But apart from this type of conflict within the family, involving the adhesion to diverse cultural models, there can be very serious conflicts between the host countries and immigrant families,

striving to the affirmation of a precise cultural identity. Demands made upon the host countries by these families relate principally to the provision of social services and other means to defend their social traditions. Multiethnic societies are becoming less and less disposed towards fulfilling the traditional duties of solidarity towards minorities. The case for family rights is in this sense emblematic. The economic costs of tolerance policies are producing widespread feelings of social intolerance.

Many western governments are facing the problem of these feelings of social intolerance, of a dangerous cultural refusal of whatever does not form part of the national society. These sentiments are not only shared by isolated extremist groups, but also by large sectors of the public opinion. In this field, there is an increasing social unease, and especially in the right-hand wing, this unease takes the form of a more or less aggressive political protest against the government and the parties in power.

2. Taking into consideration the difficulties involved in implementing the rights of the family and of its members in those countries where a proper "welfare state" has never been achieved, or where it seems to be quite lacking, or where there is a diffused social intolerance towards the affirmation of a model of the family based on the respect of the rights of all its members, it is evident that in these cases changes within the family should be reflected in corresponding changes within society. In particular it is necessary to widen the boundaries of the Welfare State. In fact the enforcing of women's rights, of those of minorities and ethnic societies, in short of the weakest social subjects, poses the problem of increasing public expenditure. The question that arises consequently is whether there exist today those conditions necessary for the promotion of a policy of strong social solidarity, especially through the strengthening of the welfare state. But how realistic is this target?

Ahead of us there lie several difficulties to be overcome. It must be however clear that the ongoing trend towards economic globalisation does not allow localised interventions to redress single situations unless such efforts are backed by global strategy able to face the "great gap" within the planet. Strengthening the social State to guarantee social rights means promoting new development policies on a planetary level, which take into account the necessities of all the peoples. Rights are a very expensive matter indeed. In this sense, one has to distinguish between, on the one hand, fighting for the defense of civil liberties, that is, the so-called bourgeois

freedoms and, on the other hand, implementing social rights, that is implementing rights which involve the exercise of power. In order to be able to exercise power, one needs the necessary means.

Nobody denies the protection of fundamental human rights in principle. But, in the light of severe economic difficulties of Western countries, the question arises whether the necessary conditions for the promotion of a meaningful culture of rights exist?

Continuing budgetary cuts by governments means that there will be less resources to allocate to social solidarity. This is not, however, the only problem. Western populations are becoming less generous; it is as if, after the fall of communism, nationalist egoism seems to have pervaded the world.

The disappearance of the historical enemy has certainly brought about more security in the western world. Forever gone, perhaps, after reigning for fifty years, is the nightmare of a nuclear holocaust. All this has brought about more social peace.

For the people living in the West, in the rich world, the competition with another social model, the Communist one, ceases to exist. Nor is there any real fear that other peoples may fall into the clutches of Communism. Prior to 1989, we were faced with a military and ideological conflict on a global level. Any conflict, wherever it may have occurred, acquired a global meaning requiring the intervention of either of the opposing forces keen to avoid a situation whereby the other would acquire some sort of advantage.

The social model which competed with the Western one was a model based, at least on paper, on the values of solidarity; on the myth of a social transformation based on equality, on the social value of the human person, of a human person freed from the shackles imposed by supremacy of economic power. There is no doubt that the dispute between the two models of democracy – that is whether development or liberty should have priority – spread around the world, in both the developed and the less developed states, values of solidarity, of social justice, without which no social system can be said to be well-organised.

In the light of the above, it has to be recognised that the end of communism, however, does not mean the end of those historical problems which communism has generated. In the Western culture, communism was not an alien concept. It was born in the West, and its strength was based on the typical contradictions in the western capitalist society. Although communism has ended, the problems which had created it still remain. The West has to tackle these problems, since it no longer has the alibi of the conflict between

different ways of life and of societies which are incompatible. In other words, the West has to undertake an in-depth analysis in order to solve these problems. And it has to do so in a period similar to the present one, which is no less difficult than the preceding one, characterised by East-West conflict.

Citizens of the Third and Fourth World are increasingly arriving in the West. And those who do not come here with their problems, produce instability and tension in their own homeland, that is in those parts of the world where they live. These tensions and instabilities will inevitably influence even the rich societies, irrespective of the distance. In fact, after the end of the blocs, the world has become even smaller, in the sense that whatever happens in any part of the world has repercussions on the entire planet. It is inconceivable that such problems, which destabilise entire regions, can be resolved by recourse to military defense. After all, the very concept of security, in a world which is no longer bipolarised, is a multidimensional one, that is, it is based not so much on military force, but rather on the type of security which can be created especially by means of a just development – a development capable of putting an end to the biblical exodus which will push millions of people from the poor world to the rich world.

For decades, it has been argued that the “just development”, that is the realisation of a system of social justice on a global level, should constitute an inevitable objective of capitalism, capable of reconciling the needs of the market with those of protection of all human beings. But one cannot predict for the next few decades an expansion of capitalism which allows the rich societies to guarantee the development of poorer societies thereby expanding the boundaries of the developed world. Therefore, it is necessary to formulate strategies of immediate intervention and not to wait for the achievement of fairer economic equilibria at a global level. The truth is that there is no alternative. It is necessary to adopt and implement a “welcome” policy towards those populations migrating from the southern to the northern part of the world.

Consequently, in the near future, all developed societies will have to tackle those problems normally confronting multiethnic societies. If one is to guarantee a peaceful coexistence then it will be necessary to organise better such societies. This cannot be achieved by imposing particular social behaviour, for example by imposing western models of life even under the threat of discrimination on all those persons who become a component of those same societies. It has to be understood once and for all that the north-south conflict

is not only a conflict between well-being and poverty. Mainly, this is a conflict between cultures: the Western and the Islamic.

It is inconceivable that development can cancel the distinctive features of a particular social culture. In many countries, the conflict is, today, not between development which modernises underdeveloped societies and the desire to return to the middle-ages. The opposition to western modernisation often betrays an opposition to the affluent society rather than to technological innovation as such. Notwithstanding the apparent contradictions caused by an unjust distribution of wealth in many underdeveloped societies, where restricted elite groups are assigned the entire control of the national economy, these societies are nonetheless cohesive due to a strong social feel of national solidarity. These people carry this culture of solidarity also when they migrate to the West – that is when they become part of a society based on a market economy and on ruthless competition. The less a society is developed, the stronger is the spirit of solidarity.

We do not speak about the solidarity organised in the typical forms of the welfare state. In these countries the state does not guarantee the entire spectrum of social services, neither can social solidarity be achieved through a sophisticated system of social services. Perhaps in certain instances the social politics does not go beyond the free distribution of pea soup to the hungry. But solidarity exists, and this is reflected in the institutional status of the family. Nearly in every case, it is non-governmental institutions, nearly always religious ones, who protect the mother and the child. These forms of non-state assistance certainly affect the social development model. It is religion with its moral support and assistance which binds society together. It will be a non-state solidarity made up of elements which guarantee only the minimum for survival. But it creates a formidable network between persons and between families on a predominantly religious basis.

In this social reality, the creation of a true welfare state is a condition for the secularisation of that society, and therefore for the diffusion of a proper culture of rights, on which the emancipation of the family itself depends.

As already stated, when the fear of communism disappeared, it was as if the world was not only freed from the shackles of old ideologies, but it assumed on itself new obstacles, becoming more closed and insensitive due to its own national egoism.

An invasion by the people of the poor world constitutes for the richer nations a very real danger. Such an invasion would have

much more devastating consequences on established life-styles, than the military invasion threatened by the Communists during the Cold War. Consequently after 1989, a degree of racial intolerance and cultural rejection has emerged, which was inconceivable in those years of "revolutionary dreams", such as those witnessed in the 1970's and in other difficult phases of the Cold War.

We are heading towards years of uncertainty for social rights, for all social rights. There are many signs which are worrying in this respect. It is well-known that today all the powerful industrial democracies are facing demands to reduce social expenditure in order to balance public finance. In the light of this more or less general trend – emblematic in this sense is the conflict between Clinton and the American Congress, and the more recent conflict between Juppe and the French unions – it is not possible to conceive that the protection guaranteed by the state to the less favoured classes will increase. If public expenditure will decrease, those persons who until now have received less, or did not receive enough to attain an acceptable level of well-being themselves, will be definitely denied the opportunities necessary to realise human potential, both on an individual basis as well as in those communities in which personality is fully realised – in the first place, the family. What kind of reception will workers from outside the European Union receive in countries whose citizens are putting up with the cuts?

It is the biggest problem of our times. The developed countries are increasingly unable or unwilling to bear the weight of international solidarity. The unequal development, increasingly more acute, will produce hordes of new immigrants. How will this inequilibrium be solved? By force? There are no national frontiers which will hold out against the exodus of entire populations, fleeing from hunger and from violence. The decisive solution would be to contrast the demographic explosion, for example by means of a serious control of birth rates. But this is not a realistic solution in the short term. What has to be done then? As already stated, the rich countries have to devise strategies of sustainable reception, in the sense that immigrants must be welcomed within countries on the basis of pre-agreed quotas among the host countries. But all this entails a re-launching and not a liquidation of the Social State, which has not only more things to do (assist non-citizens), but it has to do things better (assist non-citizens to the point of safeguarding the cultural identity of increasingly numerous minorities).

In short the welfare state needs to broaden its horizons.

Worrying signs reveal a tendency which is on the whole hostile to the diffusion of a meaningful culture of rights. Many courts, for example, including National Supreme Courts, have lately criticised social politics discriminating against the majority in favour of the few and the weak. The plight of the weaker segments of society can be remedied by changing the whole system of social protection, that is, through forms of special social protection. How? This can be achieved by reserving work opportunities to less favoured social categories or by assigning quotas of political representation to persons, who, if left to themselves, can never achieve such representation. In other words, one has to achieve equality, knowing that human beings are born unequal and that substantial equality requires a breach even of the principles of formal equality. It is a question of repeating, with reference, especially to the new poor, the miracle accomplished by the Social State during this century, which has rightly been defined as the social-democratic era.

We refer to the so-called "affirmative action", that is to those positive actions which protect equality, and which are intended precisely to overcome difficulties and delay which historically have not permitted the weakest people to exercise rights, which on paper are given to them. The American Supreme Court has written very interesting papers on this subject, which have subsequently been used as a model by the legislatures and constitutional jurisprudence of other countries. On the other hand, in the light of certain unexplainable decisions arrived at in recent times, there is the risk of returning to the concept of formal equality of the eighteenth century. It is a tendency which aims to neutralise the efforts made towards substantive equality which have been to a certain extent the greatest achievement of the liberal-democratic societies in these last 50 years. Even the European Court of Justice has, in the last months, criticised "affirmative actions", because they are in violation of the principle of formal equality. In short, if it is only a question of guaranteeing *par condicio* on paper between subjects who have very different points of departure, the weakest will always remain so. Paradoxically, equality demands the *dispar condicio* when the points of departure are very different. In other words, for an effective policy on rights to be realised, it is necessary to modify the existing social equilibrium, in short, to provide the means of overriding those obstacles which negate the implementation of these rights. But this is not what is happening today.

This situation is worrying, because even in the field of political representation, the notion of reserved quotas for those who are not strong enough to successfully achieve a full political representation, is being very often objected to, by insisting on criteria which tend to guarantee even here only formal equality. Even the Italian Constitutional Court has recently expressed itself on these lines, in a decision which has raised much debate (on the question of the quotas reserved to women in the institutions of political representation).

If this tendency were to be irreversibly affirmed, all the innovations introduced during the years of the welfare state – by a jurisprudence and legislation aimed at promoting rights and with the objective of affording an equal opportunity, eliminating above-all the causes of discrimination – will be annihilated.

The return to the nineteenth century liberal myth of formal equality, and the idea of an imaginary “market” equal to everyone, where all citizens possess the same resources and the same potentialities, would drown the rights of the weakest segments. Such an idea would be a hypocrisy.

If older persons will no longer be assisted, and if education will not be open to everyone, thereby removing the root of educational problems of many youngsters, if one had to pay for health services from one’s own pocket, if the working woman, who remains an essential subject to guarantee the unity of the family, will not be protected as a wife and as a mother, even the family will definitely be worse off. The recognition of new rights to the family will be of little use, since it cannot even exercise the old rights, which included the traditional ones of the welfare State. Therefore, further emancipation of the family would be impossible. Moreover, it would be impossible to ensure equality of conditions, in multi-racial and multi-ethnic societies, to significant groups of immigrants. In short, it would be impossible to guarantee equality of treatment between families composed of national citizens and those composed of immigrants.

There is no doubt that this regression in social politics, which is taking place everywhere, will have most impact on the family. The rights of the family are not only those civil freedoms which are exercised within the family and guaranteed by the same family, but consist in “powers” which cost money, which the family itself cannot self-finance, and therefore are a burden on society, that is, on all its members.

The rights of the family are moreover social rights. And when there is a regression in social rights, there is a regression in all

society, because the whole society becomes less secure and with less solidarity. In this field, all the rights "are linked" to each other. Therefore, it is inevitable that a crisis in the welfare State will at the same time cause a decline even in the most "private" rights of the family.

This decline, which characterises the contemporary politics of freedom, is confirmed even by the new Constitutions of the ex-communist countries.

Even these recent Constitutions contain old, new and very new rights of liberty, but the guarantee to the liberty of minorities, especially ethnic ones, is insignificant. These constitutions do not deal with ethnic minorities, being more preoccupied with the protection of national unity, which is very often precarious, due to the fact that the fall of communism has meant the end of the ideological binding force which it generated.

It is clear that the lack of a policy for minorities, or especially the emergence of a policy of discrimination towards minorities, have a rather traumatic effect on the family, if one considers it as an essential institution of the social system. In fact there are values and cultural traditions, which are mainly guaranteed by the family.

If minorities are sometimes discriminated where the Constitution and the ordinary laws afford explicit guarantees, one can imagine what happens where the Constitution in this field is silent and hence be perceived as encouraging discrimination.

In these cases, the international community must be very much on the look-out, and exercise extraordinary pressure, to eliminate any form of discrimination. It is not a question of writing down new rights, but of being aware and monitoring cases of threat or unlawful restriction of rights. This will enable it to intervene even to protect the family, also by all those measures intended to protect human rights.

3. An instrument full of lights and shadows for the promotion of a strong policy of rights has until now been constituted from the assistance given by the international community to underdeveloped countries. This solidarity should encourage, first of all, the emancipation of man, both as an individual as well as in the society in which he develops his personality, in the first place in the family. But solidarity and the resources made available to these needy peoples will have little significance if, together with such international assistance, there is an attempt to impose on these peoples the ways of living and social cultures which belong to the

materialistic societies of the West. It would be a grave mistake, for example, to start off from a European conception when dealing with the liberty of the family. The family is normally organised according to the values which prevail in a society. It is above all an expression of a well defined relationship between authority and liberty. In this sense, the human rights which need to be affirmed and protected in the family need to be consented to by people if they are not to remain, as stated previously, simply on paper. This elementary truth must be kept in mind when conventions on the rights of the family are drawn up in international fora and expected to be imposed on underdeveloped societies. But this is true even of families of ethnic minorities, families which have emigrated to developed countries and desire to preserve their traditions and their own cultural identity, namely that of their country of origin. No imposition can hold water in these cases. Integration cannot be imposed from above. It will be accepted on the basis of the advantages which it may offer. It cannot be imposed through discrimination or sanctions, because that would inevitably lead to intolerance and conflict. It therefore leads to unreconcilable differences. This, for example, is the lesson to be learnt from an experience which was emblematic: that of the islamic veil in France. This was an event which provoked an endless discussion. It revealed the blindness of the French authorities who wanted at all costs to impose integration upon the Moroccan minority.

The liberties of the West need to be desired not feared. Therefore great patience must be exercised in this field in so far as it upholds a family structure which belongs to the host country but which will distort the habits and mentality which are ingrained in certain social groupings.

Therefore a policy of rights, whichever the government or type of government promoting it, presupposes a diffused culture of tolerance. If human rights and the concrete exercise of these are guaranteed to every person, then one must not forget, or worse still, discriminate against, persons who are "different" since they do not embrace the values of the majority and have different social habits. And tolerance is not a habit which is automatically generated from the democratic method. Such method promotes and protects pluralism but especially today there are many democratic societies which are increasingly intolerant.

To tolerate diversities means to tolerate dissent, to accept that the political and cultural hegemony of the majority could be fought against and overthrown, and especially to give guarantees to the minority also if it is on the road to becoming the majority.

In short the minority must possess all opportunities and the means to succeed. In any case it must have the opportunity of its own cultural and economic growth. Instead, what is happening today is that the majorities are confining themselves in defence of their supremacy. They sometimes seem too preoccupied by the risks which could threaten the democracy if undemocratic minority would assume the power. But democracy, if it is above all a democratic process, must take this risk. Democracy cannot be defended by undemocratic means. The increased presence of ethnic minority groupings may certainly pose problems of political and social stability. Therefore in a truly democratic society, the majority must pay in order to guarantee minority rights, even for those rights which operate towards its own legal upheaval. Tolerance of people who are different or even of antagonistic minorities is a duty for an evolved society.

There are however limits to tolerance. These limits are exceeded when, for example, there is an attack against the fundamental nucleus of human rights, which must be protected not only in evolved societies but in any social system. The first duty of a political system is self defense. "Differences" which endanger social living cannot be encouraged or protected. These cases do not amount to the criminalisation of the values of others, but methods of achievement. To promote the protection of human rights in the family necessarily involves an interference in the sphere of State authority. Therefore it is necessary to overcome certain anachronistic barriers founded on the myth of untouchable national sovereignty. However, the problem with intervention towards the protection of human rights is that of never losing the sense of proportion. The limitation of State sovereignty for the protection of human rights does not imply the confiscation of national sovereignty. Nobody can impose on others a particular social or political model. These choices remain in the discretion of the legitimate government. For example, no foreign authority has the right to intervene on birth control. It is only the legitimate government of a country which has a right whether to encourage or discourage its demographic growth. Yet, these decisions influence heavily on the model of the family and its social role – in other words on the rights of the family, especially those which are in any way connected to the state of the well-being of a country. It is a notorious fact that an increase in demography can cause new inequilibria, and consequently new tensions in the relations between states. From the realisation that one cannot impose a particular

demographic policy on a particular country, it follows that one can only try to encourage in various ways a birth control compatible with the needs of society .

Therefore, there is no one single body municipal laws on the family and its members which is equally applicable to all national societies. One can try to impose the right of fair laws (for example those which protect the "democratic" family), but the statutory guarantees could cause collective reactions of rejection, which in turn can have a destabilising effect even on a political level. In such cases, not only is the family not protected – since the family itself does not want to be protected or does not want to be protected in a certain manner – but there is also the risk of jeopardising the whole social system. As Europeans, we must not assume that our "family" is the one which most respects human rights, and especially that it is the only family which guarantees a well-ordered society.

Polygamy itself, or some forms of particularly strong marital and paternal authority, or the very organisation of work based on the family, or on a patriarchal regime which discriminated between the various members of the family, may be overcome, if there is a project of general reform of the society. In short, in such cases, it is not a question of insisting only on statutory guarantees, but to guarantee an adequate economic and social development. In fact, unless sustained by an adequate system of social services, certain types of reforms which impose equality in the family will weaken the very basis of the whole social system, without, however, allowing that society to replace the old equilibrium which collapsed, with a new one.

From this point of view, one need only consider the role of the family in an undeveloped society, where the family forms the basis of the productive system, and the organisation of the whole society is molded on this reality. In general these are societies which assign to the family the fundamental task of guaranteeing a certain work culture, on which that society is organised.

This system cannot be broken down except through the creation of a truly industrial society or a vital market. These are all factors which lead towards the dissolution of the "large" family into smaller or nuclear families, the members of which are no longer tied down to their place of birth. This would lead to a situation in which the members of the family are no longer bound by the decisions of the clan or family. This is, in other words, a different family, which though no longer united because of economic interests, remains nonetheless united on the basis of mutual affection and feelings.

In short we are confronted with several family models. Even the principles which are at the basis of such models, though nominally identical, can perform a different role. The guarantor of unity of the family, for example, is a value which is defended both in underdeveloped as well as in developed societies. But on the level of regulation of interpersonal relationships it plays a different role depending on whether reference is made to the nuclear family or the "large" family (which does not suit a pluralist and highly mobile society characterised by a significant circulation of ideas and fast social changes).

Some values may be sacrificed on the altar of family unity – for example that of equality of the spouses – but this value does not have the same relevance in a democratic and pluralist society as they have in a gerarchical society. Just as the conflict between the unity of the family and the rights of women does not produce the same effects in a developed society (where the woman for example receives assistance from the State in doing household work) and in a society in which the family is the essential productive unit and the emancipation of women would not only lead to a crisis for the family but also to the whole society.

However the principle of equality suffers some exceptions even in developed societies in order to guarantee cohesion and stability in family relations.

In other words, if "general" social conditions, upon which the authority of the head of the family and the liberty of the woman are based, are not modified, it is difficult for a law, just a law, to be sufficient to change the living conditions of the members of the family.

Indeed, up to just a few decades ago, the internal regime of the family in most "developed" societies was that of the Napoleonic Code with the husband as the "head of the family partnership" and capable of imposing his own choices on his wife even though they were not justified to guarantee the unity of the family. In some legal systems the inequality between husband and wife reached the point of dealing with the unfaithfulness of the husband on a different level than that of the wife. This model of the family was typical in a society where change was not frequent and which was based on a stable and closed family as a fundamental prerequisite of the stability of a strong State. This family, reminiscent of the 18th Century, disciplined in an authoritarian and patriarchal fashion and institutionally submitted to the State, could not survive in a "free" polycentric society based on consent and not on authority.

In any case the only definition of a framework of guaranteed rights of the family based on a particular model of family relationships without strengthening the instruments directed towards the emancipation of the family, will not change the position which the family enjoys within society.

One must also keep in mind that an increase in the quality of life of individuals does not necessarily imply the parallel development of a strong culture of rights. Without such a culture, even the conquest of new rights risks becoming an empty gain. In other words, more "affluent societies" do not automatically imply more rights, or more rights which are actually experienced in reality.

This is shown also from Third World societies which have experienced wealth. This wealth has led to an increase in consumption but not in development. This is the case of Libya and other oil producing countries. Wealth increases consumption but it is not always utilised for a process of economic and cultural modernisation capable of giving birth to a new social system.

In these cases national wealth will never become the fly-wheel of social transformation because often it remains in the hands of a few people. This is the reason wherefore within these societies elements of underdevelopment and modernity will coexist for a long time.

These discussed changes regard the relationships of the family not only with the outside world, for example with the system of production and the labour market, but also internally, for example, with reference to relationships between the spouses and between parents and children. Without such changes there will not be any modification to the status of the woman within the family and society. The woman who does not work outside the family, in a family typical of agricultural societies, is destined to see her rights whittle away even when the law provides them for her.

The woman who performs exclusively domestic work will, among other things see that the economic fruits of her work are being expropriated in favour of the head of the family. This is a form of confiscation of the economic value of her work, which in an underdeveloped society is a phenomenon which affects more or less every person, especially those who are weaker. In this context it will be observed that institutes created for the advancement of the woman in society may produce results harmful to the same cause. In the patriarchal family, where the woman is confined to doing housework, the separation of property is the result of inequality

between the spouses. On the other hand, the simple provision of a system of community of property will not change this set-up without the affirmation of a different culture of rights in the family. The truth is that not all processes of evolution are linear, nor, for that matter, do they coincide with the emancipation of the family and its members especially on the level of reciprocal rights and duties. This is true of an economic reality at the centre of which lies the family as the principal unit of production.

Unless they are not taught how to work, it will be difficult for people to develop an awareness of rights. It is not only a problem of the fair distribution of wealth but above all a problem of the diffusion of an authentic culture of work.

For example, at the time of the Industrial Revolution the English family was very poor. But people were taught how to work and a new culture of work was born. What was previously accomplished by the family, was now gradually accomplished by the State, by society and above all by the market. In other words, an "affluent society" will not necessarily be developed, unless power is distributed justly and a true industrial culture releases the family from its function of forming and organising the work force.

It may also come to pass that important legislative reform may, in underdeveloped countries, be effected within a relatively short time and, apparently, without significant difficulties. This notwithstanding, the institutional changes might not reflect social realities.

The social conscience in fact evolves very slowly. Laws on their own do not modify society; in advanced countries, in fact, laws tend to regulate a society that has already changed and do not attempt to bring about the change desired.

In brief when dealing with laws for the promotion of the family, it must be kept in mind, that these laws cannot be imposed from above, ignoring the fact that every member of the family has to be convinced of the fairness of these laws. Furthermore it must be remembered that not all humanity embraces the same ideas about liberties, the duties of the State, the role of religion and that of politics.

Our culture of rights, the Western culture, has its roots in the Enlightenment and in declarations of rights. We are used to look at man as a monad, whose individuality is not annulled by society. For us, a human being is not a passive agent for the achievement of society's ends. Nor is he an entity predestined to perpetuate the current social system. The man-monad achieves self-realisation

through the recognition of his liberty, which is only limited by the liberty of other men, and through equality which allows him to utilise his liberty to claim that amount of power which is necessary for self-realisation. Therefore, equality and liberty, which we consider as two elements which cannot be severed from each other, are essential instruments in order for the individual to obtain complete self-realisation through an equitable distribution of power in society.

However there are societies which though not based on these values are still well ordered societies because even they are organised, for example, around the most important principle which regulates collective living: the principle of legality. Public authorities, are like everyone else, bound by the law and may do nothing which would otherwise be wrongful unless specifically authorised by the law.

By the principle of legality no person may be forced to do anything if not by the force of law. Well, these societies do not consider individuals as single entities, isolated from each other, but within social groups. This may be the family, caste, tribe or other entity.

Individual freedom within this vision is limited by the fact that the individual is part of these collective entities which represent the overall natural structure of society. The individual expresses his personality through the collective action of the group with which he identifies himself and to which society entrusts the role of contributing to defining an acceptable general order.

In societies in which the achievement of the fundamental freedoms is given by social groupings and not by the "individual", the possible recognition by law of an individual's right to decide would not change automatically the social order, because it would not break in any case the unity of the caste or the tribe.

It is clear that from such a different social framework, one derives also a different legal regime of the family. Therefore these different social realities, which constitute insuperable barriers for each individual, must be kept in mind.

Of course, there are certain immutable fundamental rights which cannot be limited by the individual's membership of a group (for example the right to physical integrity). There are social rights (the most important of which is that of participation in decision-making) without which a group cannot be well organised. But if the social order is not based on individual-monads, but on collective entities within which individual liberties are submitted to collective

decisions, then the rights of the family and in the family must take into account that social reality.

After all, even our legal categories referring to "single" citizens, must in a certain sense be reconsidered precisely in order to safeguard values which are essential to the unity of the family and to a harmonious upbringing of children. These are values which are upheld by any statal organisation worthy of that name.

The same idea of equality of the spouses or autonomy of the family, as the proper place for the transmission of values and for the protection of minors, should be referred to the sphere of autonomy which the State guarantees to the family. This, if it is true that no system for the regulation of the family can be inspired from a principle of absolute non-interference by the State. It is sufficient only to think of the transformation of the child into a citizen or the essential processes of socialisation of the minor, in which the State is directly interested, in order to understand that, whatever the political regime, no State may allow absolute autonomy to the family in this field.

However, there is a point of equilibrium between complete autonomy and complete interference which must be established from time to time, keeping in mind one's ideas of liberty and equality. This point of equilibrium will obviously differ depending on whether one is dealing with a gerarchical society or with an egalitarian society.

Therefore, to say that the State cannot be disinterested in the family is one thing, but that the State must take care of education and link the minor to dominant values, political ideas and to the dominant social culture, is quite another.

4. There are many factors which affect the liberty of the family, and consequently the rights of its members. If one considers that the fundamental rights of the family are recognised and protected, at least on paper, in nearly all legal systems, the principal problem therefore is, as stated previously, that of taking these rights seriously. In other words, to expect their observance especially in underdeveloped societies, authoritarian societies and in societies where power within the family is not founded on free consent.

Therefore the problem is that of guaranteeing effective rights, especially when considering that in places with low social mobility the family is an instrument of social conservation which is almost never penetrated by the law or by social control.

Within these real situations the family is a closed society

governed by the rules of tradition, characterised by an unequal distribution of power between its members. But above all it is a society which is considered "off limits", i.e. not subject to review, by the legal system itself. It is therefore inevitable that in most cases family rights are not judicially ascertainable because the very idea that the child who is the victim of violence and the wife who is discriminated against, may have recourse to the law to have their rights enforced, is too far off an idea within the dominant social culture.

Such situation should be considered by people as a subversion of the very basis of the natural family society. Consequently, in such situations, it is not enough to create a system of social control which is today inexistant, but also to give public authorities an effective capability to intervene in order to guarantee respect of the law within the family. In other words it is necessary to make rights, which are not enforceable due to strong social reaction, judicially enforceable.

It is not a question of recognising new rights for those who cannot get old rights enforced, but a question of promoting a culture of rights through adequate transmission of information and easier access to justice. One needs in this sense to control the behaviour of the courts of justice and even to supplement their inertia. In other words, it is evident that the violation of the rights of the family shall provoke a strong social and jurisdictional reaction. A strong social and jurisdictional reaction would be the most serious incentives designed to spread a real culture of rights among citizens.

Even when dealing with political liberties and above all with the rights of the woman to a full and knowledgeable political participation, the problem of having means available for the exercise of rights must be given priority.

The situations which limit the exercise of rights in this field are not only legal but factual situations. In order to change the distribution of power between various social groups, it is not enough for the law to recognise the passive right to vote of all citizens. The right to vote must be concretely accessible, but this depends on a lot of factors.

The countries which are members of the United Nations are not in a position to refuse the recognition of the rights to political liberty contained in the UN Charter. These rights are a natural consequence of the right to self-determination of peoples. Now, it is worth little to recognise political participation if there is no effective control (which in most cases it would be desirable to have

performed by the international community itself) on the regularity of the electoral campaign, and primarily on the voting process. Then, there would be no political participation without access to information in order to circulate one's ideas and adequately mobilise the public opinion.

In this field women suffer from the same difficulties experienced by all persons who are weak or otherwise disadvantaged vis-à-vis the traditional holders of power. Therefore in this field it is necessary to guarantee substantial equality which signifies real participation in political life. It is necessary to guarantee those liberties without which it is nearly impossible to exercise the rights to political participation. Above all, it is necessary to guarantee liberty to information and of information.

Considering that these problems have not been completely solved in surely pluralist societies in which the social control of power has a long history, one may easily realise the amount of difficulties which will be encountered in those countries where democracy is a recent conquest, or in which there are authoritarian regimes which penalise political participation not only of women but of entire populations. The protection of political rights in these cases may be achieved by the instruments of control which can surely be wielded by the international community. The most important of such instruments is international economic help. It is true that no conditions may be made when dealing with the survival of a population. But when the issue is one of giving incentives for development it is surely pertinent to question the type of development which will be financed. In other words, one must question what type of social, cultural and political development will be encouraged through the resources available. Once the right to life is guaranteed, the international community's resources must be aimed to the diffusion of the democracy, in the sense that they must guarantee well organised societies which are in a position to promote the formation of the human personality in the most complete manner.

Local culture and tradition should be respected. But there is a nucleus of fundamental rights which cannot be removed whatever the political regime. This fundamental nucleus is derived from Conventions of fundamental rights which have been developed by the international community.

Once the east-west competition is over, it is necessary to address realistically new global conflict, which is the conflict between north and south. All countries have to confront the gravest problems faced

by Third World countries, through instruments similar to those contained in the Marshall Plan. At that time, after the war, the issue was that of reconstructing countries devastated by war and avoid their attraction into the communist sphere of influence. Today, the issue is for everybody to spread well-being and a culture of rights in political realities which, if left to themselves, will oppose the West which is considered as the world of wealth and materialism, even if not necessarily in a military sense.

5. Taking this into account, the greatest challenge which the western world today has to face is with itself. The greatest challenge is thus the reform of the welfare state. It needs to guarantee the traditional levels of public expenditure during a non-expansionist phase of capitalism as in the present. The State's retreat from those areas of social politics which it has gradually occupied could have dramatic consequences even on an international level. The problem is not only that of saying no to radical reductions in public expenditure which are capable of affecting that very basis of solidarity which renders democracy a value which may be authentically experienced by everyone, but to reorganise this expenditure keeping social changes in mind, first of all those changes which affect the very social structure which will become ever more multiracial. The poor, namely not abstract social categories but concrete individuals, are not always the same. There can be no doubt that, for the purposes of the changes in the basis of society, a primary importance must be attached to immigration. "New weakest" will enter wealthy societies and the "State of solidarity" cannot ignore these new subjects, whether they are citizens of the host State or not. A reorganisation of public spending primarily means the following: to remove the old protection granted to persons no longer in need of it, and to assist the new poor. The State is require to spend not less, but better. The reform of the welfare State signifies making it more just.

It is necessary to guarantee not only the needs and the rights of the persons hitherto assisted, but to address the citizens so far neglected. Unfortunately the unions themselves in protesting against the "reduction" of the welfare State, seem to be more interested in guaranteeing the rights of citizens who normally benefit from the State, rather than in obtaining something for those who have never received anything, and who, in any case, have never received anything commensurate with their real needs and capacities. Reforming the Social State means even this; not to give

a little assistance to everyone, but to establish a hierarchy of needs and capacities to be privileged, having taken the general interests into account. Blind egalitarianism is as much an enemy of justice as discrimination.

In conclusion the challenge ahead is to solve the new social conflicts created as a result of new poverties and discriminations. The protection of the family will become effective only if founded on a policy of solidarity aiming to solve simultaneously major social needs.

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