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Law in contemporary society

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“Law is a system about limits” is what my philosophy teacher said during my last year at school.

My studies on legal theories and systems, at the faculty of law in the University of Rome, later convinced me that this definition was, to say the least, partial, because it was limited to the negative aspect of the obligatory nature of certain behaviours.

Instead I wanted to see law as a system concerning freedom, a system which would allow the various needs and expectations of individuals and the collectivity to be harmonised in a kind of symphony, where the autonomy of each part does not threaten the organic unity of the whole. It seemed to me that the ideal *raison d’être* of law was its role of regulating and supporting the life of communion and fellowship among people in view of universal fraternity.

With these ideals at heart, after finishing my studies, I began my career as a lawyer.

I must admit, however, that I came face to face very quickly with the harsh realities of every day, made up of selfishness, expectations and malpractice.

I don’t know if I would have had the courage to go on if I had not, on one blessed day, met some people who drew inspiration for their lives from the gospel based ideals of Chiara Lubich and the Focolare Movement. They gave me a higher vision, the hope of a true justice which came from recognising and practising the law of mutual love, making it the soul of every relationship, including juridical relationships.

It is commonly understood that law arises naturally from human beings; it is intrinsic to human nature to be in relationship with others. The human person, in so far as they have reason and will, expresses

themselves by being in relationship with those who are “other”, in the first instance with other human beings. People do not become part of society through choice but are born into it. They need other people just as others need them, and this law of interdependence acts as cement in society and as a balancing factor in law. This law regulates relationships among people so that just relationships can be established, which means relationships among equals and not power based relationships in which the weak are oppressed by the strong.

Two fundamental requirements emerge from life in society. First, that each man or woman be respected in their dignity as a person and be able to express themselves as such. At the same time, relationships which are established in order to meet the most varied needs of existence should be carried out properly so as to achieve the purposes for which they were put in place. Law should guarantee reaching these two goals.

Above all we must note that the juridical experience established in various ages and in different cultural environments, corresponds to the characteristics and the level of social, religious and civil development reached by the different forms of life in society.

Primitive societies generally did not have a legal system that its members knew they must follow. Individuals naturally conformed to the usual way of behaving within the community. If violations occurred there were means and ways of correcting the wrong or amending the crime.

Human experience began to become more and more juridical and explicit as the correctness and conformity of behaviours became organised and was transformed into a legal system composed of laws. These laws were recognised by the subjects not only as being possible and lawful but also obligatory. Together with the awareness of law came the awareness of legal obligation, knowing it is right to comply with the norms.

This set of laws governing relationships between people, and the active role of those bodies which have the authority to create norms and require their compliance, constituted the legal system of a community

which, when it reached the political identity of a State, was enshrined in the Constitution of the State, in its codes and in other laws.

Generally, the transition to societies that were more politically organised around centres of power came about in regions where agricultural production began and which allowed permanent settlements of populations in a given territory, first villages and then towns and cities.

The organisation of life in society brought with it the need to provide for the needs of the collectivity: to guarantee agricultural production, build roads and irrigation canals, regulating labour relations, the exchange of products, marriage and family relationships, inheritance and so on. Lastly, it was necessary to regulate what was unlawful, the damage, offences, and wrongs done to others, in order to avoid personal vendettas and so establish sanctions and procedures.

With the coming of Christianity, a superior law came to the fore as a reference point. It is a law that comes from God, who is Just and was given to humanity through Jesus. It is the law of love.

The greater righteousness, or justice, which Jesus asked of his disciples, is not formalistic adherence to a law – of which the scribes and Pharisees were the teachers – but it is a work of reconciliation, of love, so as to enter the Kingdom of Heaven. Its goal is communion with God and with all brothers and sisters.

Christianity enables people to see that justice – understood in this way - can become a driving force in human history. The early Church bore witness to and spread this righteousness- communion.

At the beginning of the modern age, with humanism and the advent of natural sciences, human autonomy with regard to knowing and using reality was affirmed. In the field of law this led to the theory of the “social contract” whereby citizens conferred power on the State in order to regulate harmonious living through its laws.

At this point I would have liked to say something about the development of law in Africa, but I have to admit my ignorance on this subject. Nonetheless I asked an African friend, a lawyer, to tell me something and a very interesting scenario was put before me with significant discoveries.

To start with I understood that it is very difficult, if not almost impossible, to approach African law as a whole, given the size of the continent and the co-existence of so many different cultures, ethnicities, languages and religions.

At the same time I think there is a common origin among them, born from a shared vision of the world and of the human person in the different African societies. There is a very strong communitarian tendency in which the individual is never considered in an isolated way, but always as a member of a community (family, clan, bloodline or tribe) to which the person owes duties of responsibility and from which they receive help, support and protection. The life of various communities is guaranteed by long-standing customs together with rules of an obligatory nature, handed on orally in every ethnic group, and their observance maintained by traditional leaders and groups of wise people composed of the elders of the community.

This customary law constituted the principal component of African law.

In the 19th Century, due to colonisation, the individual African states went through a process of acculturation, due to contact with other legal systems and traditions operating in the colonising States. Surprisingly, customary law managed to resist such changes, adapting itself to them without merging with 'modern' law from which it still remains visibly distinct.

The imposition of colonial regimes in fact led to the development in African societies of a "dual" system. On the one hand, there was a Western type of law, applied by courts presided over by foreign judges, whose jurisdiction was over everybody whether for penal or civil matters. On the other hand, there was a customary style law, applied by courts made up of traditional leaders or groups of wise people who made judgments on all other matters. This latter type of justice was based on principles diametrically opposed to those of colonial justice, since the customary law judge, rather than being concerned about applying the law, sought to guide the two sides towards reaching a compromise which, rather than declaring one side right and the other wrong, aimed to seek a solution that would safeguard social equilibrium.

The role carried out by these customary law judges in the context of African societies was not affected by the arrival of Western judges during colonial times, nor by the establishment of modern jurisdictions after the various African countries became independent.

Now they continue to exist in the great majority of cases and with them the dualistic structure of African justice.

This is the case while “official” African justice seems to have fallen into a deep crisis. The judicial systems of different African countries, organised according to forms, rules and procedures that are identical to those used in Western countries, suffer from a general lack of trust, aggravated by the illiteracy of a large section of the population.

To those, like me, who are imbued with Western legal culture, this dual juridical system might seem strange. But by trying to put myself into African culture, I see the importance and positive nature of the characteristics of customary law, which are expressed in terms of flexibility and dynamism and are amenable to quick responses which can take stock immediately of changes in social and economic conditions and adapt to them.

Furthermore, the fact that the community prevails over the individual determines the scope of this type of law which aims, first of all, to ensure harmony and the preservation of communities. The justice administered by this type of court tends not so much to decide who is right and who is wrong, but rather to achieve conciliation between the disputing parties to safeguard the unity of the group.

Allow me to continue with what I mentioned earlier about the evolution of legal systems.

Given the overwhelming power of States and in the wake of totalitarian regimes that imposed their own concept of society at the expense of the dignity of the human person seen as the primary value to be respected and promoted, humankind felt the need to define those rights which must be respected always and by everyone, whether States, groups or individuals.

So we come to the Universal Declaration of Human Rights proclaimed in Paris by the General Assembly of the United Nations on the 10th of December 1948.

The world was coming out of the tragedy of two world wars, which had generated endless terror and suffering. Paradoxically this state of affairs gave rise to reflection on a nucleus of rights which were so essential that they could not be violated even during the insanity of war.

For the first time in history all nations tried to unite for the cause of the human person, starting from recognising the dignity of human beings regardless of religion, sex, race, nationality, language, and so forth. The declaration itself became an important unifying factor because all or almost all the states accepted it as an adequate statement, even if historically relative, of the fundamental rights of the human person. It is a fixed point, a point of no return in the conscience of humanity, not only because it was approved almost universally but also because it marked a significant move from the logic of having to that of being. The rights it speaks of in fact are not considered as powers of the individual but rather as fundamental attributes, essential qualities of the human person and therefore inalienable and worth safeguarding as such. More than being rights, they are values.

The shared ideals reached then were expressed from the very first article as respect for the dignity of human person ("All human beings are born free and equal in dignity and rights) and belonging to the human family ("They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood"). Fraternity was therefore seen as the duty of all people, in the way we behave towards each other, therefore in every type of relationship, including juridical ones.

I am well aware of how much the concept and practice of fraternity is known and dear to African people. It cannot be otherwise given the preeminent value they give to the community. I know the term "*ubuntu*" and even though its full significance certainly escapes me, I can perhaps grasp its fundamental meaning as the bond which connects the whole of humanity, according to the aphorism spread everywhere thanks also to Nelson Mandela, "I am because we are".

The legal experience in every part of the world puts us in daily contact with the many divisions in relationships. Legal concepts and practice, which focused on individual persons and the defence of their personal interests, disregarded the importance of relationships, the meaning and value which the other person, who is different from me, has for me. Finding ways of relating which allow individual freedoms to be

reconciled in a higher level of collaboration which leads to communion and fellowship, is an important challenge today. From this perspective the principles of freedom and equality of the French revolution, when translated onto the juridical level, strengthened individual rights but did not strengthen the life of relationships and the community. This is why we must apply the third principle, fraternity, at the juridical level too.

The African Charter on Human and Peoples Rights explained better the aspects already contained in the above mentioned Universal Declaration of Human Rights, establishing that “every individual has duties towards his family and society, the State and other legally recognised communities and the International community” (art. 27) and has the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance (art. 28).

It seems to me, therefore, of great importance to open a fruitful dialogue with the cultures that value in their tradition the role of the social environment in which each person is included, to reconsider the rights of persons in the perspective of the paradigm of universal fraternity and to envisage a development both in extension and in depth. In this Africa can give an important and essential contribution. Certainly we need to find in Africa’s own communitarian culture the legal instruments suited to put into practice the principles of modernity. This is a challenge which I think can be taken on by this distinguished university and pursued through your commitment, for the good of many.

The life of the Focolare Movement, which is permeated by a spirituality of communion, contributes greatly to the promotion of fraternity.

In fact, right when the world was experiencing the events I have just described, and perhaps it was not an historical coincidence, this movement was beginning in Trent, in northern Italy. It was generated by a charism of unity, God’s gift to Chiara Lubich, our dear mother and founder who left this world on the 14th March 2008.

When the Movement began with Chiara and the young women who were her first companions, among the ruins of her city during the Second World War, the ideas which would later become the foundation of a new culture were already present, as if in a seed.

That first small nucleus of a new community in society was coming to life and organising itself spontaneously, in the absence of laws and institutions caused by war and the atmosphere of hatred. They rediscovered the need to start afresh from the one law of life, the Gospel law of mutual love. They experienced that this new life was able to renew the human person, the whole person and every person in their relations and in their achievements, influencing politics, arts, science, economics and, why not, law too.

Today this first core group has developed and became the Focolare Movement, almost a small people in itself, alongside other peoples on earth. It is spread in more than 180 countries and involves people of all races, of different religious faiths and of the most diverse beliefs.

In the talk Chiara Lubich gave in Strasbourg on the 22nd September 1998, on the occasion of the conferral of the Human Rights Prize, she emphasised universal fraternity which the Movement fosters, pointing out that love for people brings forth universal brotherhood, and this is achieved by a lifestyle rooted in the code known as the Gospel.

A different concept of the human person emerges from the Gospel, the person located in the public space of relations with others, with their many strands of belonging. At the same time, there emerges a different concept of shared living, modelled on the life of the Trinity.

Our spirituality is a spirituality of unity or communion. It asks us to live according to the model of the Trinity, and this life is giving rise to its own culture which is beginning to have an influence on the building up of the social fabric and therefore on the rules which govern any human community.

It is not out of place, therefore, to try to identify some aspects of law as renewed by this spirituality of unity.

Naturally, a new understanding of the concept of justice underlies it, seen as a value to which positive law must always tend to adapt itself, so as to consider itself true law.

If Jesus asks his disciples to have “righteousness exceeding that of the scribes and Pharisees”, who were considered teachers in the observance of the law and precepts, it is clear that his coming on earth has in some way exploded the very concept of justice. Going beyond the

limits of “do ut des”¹ or of “unicuique suum tribuere”², he put love as the foundation of justice and therefore the gratuitous nature of the gift (examples in the parable of the prodigal son and the workers in the vineyard!).

Going over the Movement’s life briefly let us consider some key ideas – or main points – of our spirituality to see their implications for law.

Our story began with the great discovery of God-Love and the subsequent decision to make Him the ideal of our lives.

This understanding led us to practise the “greater righteousness”. If justice is to give to each his own – we said to ourselves – since everything belongs to God, give everything to God and you will be righteous!

By giving everything to God we no longer felt we were orphans or prey to chance, but were in the arms of an all powerful Father, of an omnipotence which does not crush or oppress, because it is love and counts even the hairs on our head. Understanding that we are children made us experience his fatherliness as an authority of love, and in response we could gladly obey.

Here you can see how the problem of the relationship between authority and freedom loses its bitterness and is tempered by the knowledge that authority is service and a means to guarantee peaceful and orderly life in society; it is a gift.

By accepting to follow the design of love of this God who is Father, our freedom then shares in his omnipotence, contributing to fulfilling his plans for every person and for humankind as a whole.

Those of us who are more directly involved in the administration of justice often find ourselves facing contradictions, difficulties and failures, which can lead to frustration or discouragement. Knowing that the love of God accompanies our efforts to seek true justice, makes us more attentive when making decisions. It sheds light on the choices to be made, and frees us from conditioning and from ambition regarding a career or personal gain, and so becomes the source and guarantee of impartiality.

Commitment to doing the will of God is the second key point of our spirituality. This leads us to discovering the foundation of legality,

¹ I give so that you will give

² To give everyone their rightful dues

understood as consistency between what we do and the fundamental choice that we have made, the choice of God-Love.

This translates into doing his will, which we discover as his law impressed upon our hearts and expressed by our conscience.

People rediscover in this way the meaning of their lives, in freely exercising their own responsibility.

I remember Andrea Ferrari, the first focolarino whom God called to heaven through a road accident. He was in hospital and a religious Sister said to him “we must do the will of God!” as if to prepare him for the worst. He replied: “We are used to doing the will of God even in front of a traffic light!” In this way he showed that respect for a rule in the Highway Code was a way in which he showed his love for God.

Anyone who wants to live according to this spirit is urged on by the voice of his or her conscience to live honestly in all they do. This means paying the bus fare or parking even without request or controls; not cheating at school but doing all our part right to the end; keeping trade rules and not giving in to bribery; respecting nature and not using office time, the office phone or office objects for ourselves and so on.

This is a daily experience, which is often difficult and trying, as we face endless obstacles and almost always go against the flow of the world’s mentality around us. But it makes us into subjects of the law who are authentic and mature, who want and act according to what is understood to be right and who are fully accountable for our own actions.

Now we come to the third point of our spirituality, love for neighbour. We cannot ignore this if we wish to actively recognise the dignity of each person and their inviolable rights.

Putting others and their needs in the foreground, the precept of love transforms the right to claim on another person's behaviour into a ready and generous fulfillment of what is due. Furthermore, with its very precise gospel requirements of universality, gratuity and reciprocity, love can transform and permeate every community so that no one will prevail on the other by virtue of physical, economic, political or other type of power. It follows that this love makes the principle of equality effective, a principle which is visibly expressed in all court rooms with the words “All are equal before the law” and which in reality is equally visibly violated when those who are poor, marginalised, sick or minors, do not find adequate protection.

What can be said about mutual love?

Human persons are social by nature and need other people just as the others need them. Mutual love is the law of collaboration which, by enabling us to discover each person as a gift of love, is the cement of society and the equilibrium of law.

We have often compared Jesus to a divine emigrant who on leaving his own country brings its fundamental law with him to his new country, inviting all people and communities to regulate their life together according to the model of the Trinity. Through his life, and even more so through his passion and death, he showed the quality and the measure of love he wants us to put at the basis of every relationship between individuals and groups: to be ready to give our lives for one another.

Recovering the legal value of the universal law of love transforms duty into gift and brings about reciprocity as a consequence. Furthermore, it helps us to accept humbly anything others might say that corrects or completes our way of seeing things, so contributing to identifying the right solution and true justice in actual cases.

These were just a few points about this new life founded on the Gospel, in which we have always seen our one code of conduct.

Accompanying us, as our guide and support, is Mary, defined as "*speculum justitiae*" (the "mirror of justice") and invoked as our advocate, and so the model for all those who work in the field of justice.

We are encouraged by the experience of the Movement which seems like the proof of a hypothesis about life woven from personal relationships founded on the principle of unity. It witnesses that it is possible to establish a legal system based on the new commandment as the fundamental law for relations between people.