

IMPORTANCE OF CONSTITUTIONAL LAW TO PROMOTE JUSTICE AND HUMAN RIGHTS¹

By Giovanni Maria Flick*

The tragedy in South Sudan can be summarized in the following aspects: the worst humanitarian and refugee crisis in the African continent, triggered by multiple factors such as famine, civil war, and collapse of the economy; the difficult conditions in which the NGOs are forced to operate; the fragility of the new State, born in 2011; the violence and clashes; the man made shortages (“man made famine... when the goats begin to die, and then the cows, the mothers, and the old people...); the fate of violence and death for so many women and girls; the lack of response and the passivity of the international community; the challenges posed by the recent achievement of an unstable peace, again at risk; the ethnic and religious conflict still ongoing, following the civil war started in 2013; the extreme poverty that reigns despite the oil wealth; the risk of a genocide, as a result of the ethnic cleansing. In short: “a God and men-forsaken country”.

According to my human, cultural, and institutional background, the intervention and response to such tragedy can be focused under two approaches: the papal teaching of peace, mainly during the last fifty years; and the parallel evolution towards dignity and peace undertaken by Italy, my country, in its legal order.

The first remark regarding the item of peace-keeping, as treated in the major encyclical *Pacem in terris* of Pope John XXIII, written in 1963, concerns the addressees of the encyclical: not only to Clergy and faithful, but to “all Men of Good Will”. The universality of this message conveys a sense of secularism that involves everyone, even those who are outside of the church. It’s an appeal to man, to his identity, conscience and responsibility, even if he is not a believer.

Universality is also reflected in the equivalence established between the individuals and national and global political communities. The values and rules that must shape the interpersonal relationships, as well as the relationships between the individuals and the various communities, and between the different communities, are the same. Everyone is required to make their specific contribution to achieve the common good and peace; everyone is subject to the same rights and duties arising from the dignity and equality of men; everyone is committed to manage their relationships in truth, justice, active solidarity, and freedom, in order to tackle the pathological and sectoral developments in globalization. (20 December 2017)

The second remark—in the face of the tragedy in South Sudan and of the agonizing questions resulting for the future of all of us—concerns the rights and duties arising from human dignity in the relations between individuals and public authorities in the single countries, as well as in the relations of the public authorities among themselves and with the global community.

The intensification of the economic, social, and cultural imbalances requires adapting the economic development to the social progress; bringing about a working relationship between the countries in order to overcome the inequality in the availability of human and natural resources; increasing the cooperation between economically developed and developing communities, in view of the common good. New values, new rules, and new institutions are needed which express a global capacity as good as that of the economy and information.

The amazing advances in science and technology demand a global collaboration and association. No community can expect to pursue its interests and development by closing in upon itself, because the degree of its prosperity and development are the reflection and a component of those of the other communities. The disputes between peoples cannot be resolved with the use of force and arms.

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1. Speech delivered at the Convention of 18 January 2017.

The third remark concerns the correlation between fundamental rights and duties, inherent in human nature; these are based on human dignity and the resulting equality, and are therefore universal and inviolable. Focusing on the fundamental rights is a keystone in answering the alarming questions posed by globalization. Wars and global terrorism represent one of the many potential outcomes of a limited and sectoral globalization.

Peace arises from the implementation of those rights and duties, and manifests itself in a social life not based on power relationships, contrary to the principle of equal dignity, but on truth (by acknowledging the mutual rights and duties), justice (by respecting the former and implementing the latter), charity (by promoting the rights of others), and freedom (by taking responsibility).

The fourth remark is the most topical nowadays: “Peace on Earth—which man throughout the ages has so longed for and sought after”, to escape the seemingly inevitable chaos between peoples, to the point where “one would think that the relationships that bind men together could only be governed by force”.

Peace is not just absence of war. In its positive meaning it suggests that relationships between political communities and between people should work according to the same principle of coexistence. We cannot resign ourselves to reduce peace to the absence of war or to the traditional “*si vis pacem para bellum*” (if you wish for peace, prepare for war) because this is where the arms race, the balance of terror, and the law of the strongest come from. “*Si vis pacem, para pacem*” (if you wish for peace, prepare for peace), through collective, social, and individual commitment.

True peace based on mutual trust and “a complete process of disarmament that reaches men’s very souls” is a concrete and reasonable goal. However, in order to achieve it, it is necessary to implement social life between communities in truth, justice, charity, and freedom; this is a primary and pressing objective for managing globalization and solving the dramatic issues arising from it, for how things have developed so far and are likely to continue.

Today we make war to impose democracy and a new geopolitical order; then we will make war against the “rogue states” that foster terrorism; after that war between the rich and against the poor for the control of energy resources; finally, war for food and water; meanwhile we keep on arguing over those subtle distinctions between war in itself, just war, legal, legitimate, permitted war. This, unfortunately, seems to be what the future is going to look like. The only alternative is the concept of positive peace as expressed in the encyclical.

The difficulties are apparent. Peace has a cost in terms of renunciation and sacrifice of one’s right, which emphasizes the need for solidarity. This is not a strong and compact structure; rather, it needs to be guarded and rebuilt with infinite patience, with the courage of prophetic proclamations, and knowing that although the aggressiveness inherent in human history cannot be eradicated, it can at least be moderated.

The teachings in John XXIII’s “*Pacem in terris*” had been anticipated by Benedict XV, who defined war as a “useless massacre”. This has been reaffirmed by all his successors, who deepened the topic highlighting different aspects.

Pope Paul VI recalled that “peace is not built merely by means of politics and a balance of power and interests. It is built with the mind, with ideas, with the works of peace”; and that besides feeding the hungry, it is important to ensure that everyone leads a life in keeping with human dignity.

Pope John Paul II vigorously reaffirmed “never again war”, as the only way to prevent the destruction of the world and humanity; “there is no peace without justice”, which goes beyond the distinctions and arguments in favour of the reasons of State and the “just” war.

Pope Benedict XVI, besides the prayer for Jerusalem, reproached the arms race and the increase in military spending at the expense of the implementation of measures to promote the development of poor countries; he stressed the explosion of terrorism and international crime, within a framework of fundamentalism and fanaticism.

Lastly, Pope Francis looks particularly to the problems of migration, caused by armed conflict, violence, misery, and environmental degradation, and underlines the need to respond to them with reception and protection, by promoting the human development of migrants and refugees and their mutual enrichment, which can only be possible by overcoming the sense of emergency and fear.

I took part in the Italian experience in its cultural (as a professor) and institutional dimension (as Minister of Justice; as a government representative in the drawing-up of the Charter of Fundamental Rights of European Union; then as a member of the Italian Constitutional Court). That experience gave me insights and many concrete suggestions and allowed me to reflect on some principles, in line with those enshrined in the Catholic doctrine after *Pacem in terris*.

Our Constitution was written by the representatives of the people after a lost war and a civil war on national territory, in a destroyed country that needed to be rebuilt; it came into force in 1947 and represents the Charter of values for our coming together as a nation; consequently, it defines the rights and duties and the legal order of the Republic for their implementation.

In Article 2 the Constitution states that “the Republic recognizes and guarantees the inviolable rights of the person, as an individual and in the social groups where human personality is expressed... and expects that the fundamental duties of political, economic and social solidarity be fulfilled”.

In Article 3 the Constitution affirms that “all citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions”. Article 10 puts foreigners and citizens on an equal footing: “the legal status of foreigners is regulated by law in conformity with international provisions and treaties” that provide for such equalization.

Article 3 adds that “it is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens [and therefore also of foreigners], thereby impeding the full development of the human person”.

Article 10 also provides that “a foreigner who is denied the effective exercise of the democratic liberties guaranteed by the Italian Constitution in his or her own country has the right of asylum in the territory of the Italian Republic...”.

Finally, in accordance with Article 11, “Italy rejects war as an instrument of aggression against the freedom of other peoples and as a means for the settlement of international disputes. Italy agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations...; promotes and encourages international organizations having such ends”.

These statements convey dignity, equality and freedom, solidarity, personality development, acceptance of diversity, rejection of war, and international cooperation, and suggest precise and binding steps to keep peace in justice; as long as they do not merely stand as statements of principle but are effectively translated into legislation and concrete rules of conduct for the State and its subsidiaries; and as long as the latter are actually applied by all (State and citizens) according to their capacity, position, and social responsibility.

This seems to me a quite effective synthesis of which the necessary conditions are to put man, with his rights and duties, at the heart of social coexistence; to make the latter and its development compatible with human dignity and the centrality of man himself; to detect the main lines of the relationship between countries and supranational communities; to “awake” the memory of South Sudan in those men and countries that have “forgotten” it.