

## ON HUMAN RIGHTS, IMMIGRATION AND DIGNITY IN EUROPE

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**ABSTRACT:** *The affirmation of a catalog of rights, and their coverage, forms the cornerstone of modern constitutionalism, in the light of individualism characteristic of European culture since the early modern period. The very existence of the rule of law focuses on recognition and protection of fundamental freedoms and rights.*

*Human rights consist of that set of rules and freedoms meant as an inalienable heritage of each individual. As such, they are intended as indispensable for the acceptance of an authentically human existence, which is full of meaning and dignity.*

**KEY WORDS:** *human rights, immigration,*

**JEL CODE:** *K 1*

In Modern World, when we talk about human rights we tend not to imagine them any more from the natural-law perspective. Not anymore as something inherent in "nature" to the human being, but as an open conquest and never final.

Hence, as noted by Bobbio, "as the story of the last few centuries shows, they constitute a variable class". Alongside the so-called "rights of the first type", we find the so-called new rights, whose correct identification is increasingly taking place prevalently through the judiciary.

Positive law is a functionally differentiated social autopoietic system: it arises through law but also in change through law ( Luhmann, 1990).

In the era of globalization and technology, the introduction of new rights, not originally foreseen in the constitutions is no longer a novelty. In this regard, some scholars speak

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about rights that tend to be endless. However, on those rights considered fundamental because humans and, therefore, individual and inalienable, the problem is no longer the formal recognition but their warranty.

The equal dignity of all human beings, as proclaimed in the Universal Declaration of Human Rights, represents itself a cornerstone of humanity, where, according to the teaching of Kant, "man can not be treated by man as a simple means (Kant, 1785)".

To three historical phases of fundamental human rights - freedom from the state - freedom in the state - freedom through the state - there are other situations emerging in contemporary society increasingly defined as an open society (Popper), in its two meanings of multicultural (Kymlicka) or plural (Sartori) society.

The Universal Declaration of Human Rights adopted by the UN General Assembly December 10, 1948, centered on principles and values and universally accepted, namely a "common ideal to be achieved by all peoples and all nations", is a real turning point in the history of the entire international community. However, the fundamental problem that today seems to mark the increasingly multicultural Western societies is how to strike the right balance between opposing (and sometimes incompatible) requirements. All having constitutional significance.

The search for this balance leads to review the characteristics of certain rights of freedom belonging to the tradition of constitutionalism and related security instruments. The clash between the Eurocentric conception of the universality of fundamental<sup>1</sup> rights and other legal traditions that the Western world had ignored for a long time is a leitmotiv of now days. These "alien" legal traditions, in the era of globalization also because of the continuing population displacements come to life and occur within the European legal systems. Other times, however, the complexity of the relationship is shown in a violent form of clashes between the values of civilization(s) (HUNTINGTON, 2000).

The cultural secularism of the Western world and the more radical Islamic legal systems are at odds today. Wars, displacement and attacks on values of the societies today alter the behavioral codes: before of the individuals and then the rules of the States from which individuals seek protection.

The tolerance of the other, which is the basis of the same peace and democracy, becomes a fundamental concept. In this varied context of strange multiplicity (Tully), security and universal fundamental rights seems to be in position of incompatibility.

Member States adopted anti-terrorism measures that restrict freedom of expression (consider legislation regarding Hate Speech adopted by Western countries in the aftermath of the sad events of Charlie Hebdo); Rights and fundamental freedoms courageously conquered, such as the free movement of persons within the EU as enshrined in the Schengen Pact, today are in danger.

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<sup>1</sup> For a historical view of the evolution of the Western Eurocentric constitutionalism please see (BARBERA & FUSARO, 2009); (CARDUCCI, 2014).

Somewhere I read that there are more walls in borders today than during the Cold War.

That phenomenon of immigration is not a new but it exists since the tribal societies. In his book Huntington talks about the third wave of immigration, the wave of Eastern European countries after the fall of the communist regimes. Even in that case it was talked of crises, emergencies, and impossible survival given the cultural diversity of democratic States and that of totalitarian regimes. Yet, through appropriate measures and mutual knowledge humanity it has been strengthened. Today we speak of values shared at European level, the values that have been enriched with a common constitutional heritage. Today, we are left to deal with In my opinion, even if they are different modes of communication and terrorism, one thing has remained the same since the existence of the peoples in the event of war the endangered populations move to more protected areas the new immigration emergency.

And mind you, to escape and to welcome, before a problem of international law, is a matter of morality and human dignity. Often we are torn between the fear of strangers and emotion before the images of displaced persons transmitted by the media. Reception and immigration, however, more than a personal problem are first and foremost a matter that involve the States. Indeed, immigration is not a problem of one country but a matter to be faced at international level and more, given the proximity, a phenomenon to be managed at European level.

Manage the immigration crisis today means more than ever to manage an issue of human rights. The majority of today's immigrants seek political asylum and international protection.

In addition to the people displaced by war problems, we find migrants who flee their country of origin because they are subject to persecution for their sexual orientation or even worse for their belonging to the female gender. Responding adequately to the various needs requires technical skills that go beyond the mere relief of immigrants or their acceptance in various hotspots.

In this regard, I would stress the importance of two national projects initiated by the Department of Law of the University of Salento.

The first, concerning the exchange of best practices on the reallocation, integration and possible repatriation of asylum seekers. Given that immigration affects all European countries it is intended to study the practices implemented in several Member (Itali-UK-Germany) both at national an local level.

The other project, starting from the fact that the different needs of asylum seekers require first of all, special skills on the part of the operators (from the police to the administrative office staff and to the volunteers) is directed precisely to address the related issues of the training the public parties engaged to provide services for the immigrants.

Only if the staff is adequately prepared, both the immigration policies of the Italian State and the expectations of the immigrants themselves (as final beneficiaries), have a greater chance of success.

The intent of such projects, are ambitious and the results still uncertain. But we will work to achieve them.

Within the third wave of immigration Italy has realized that there is no sea or wall that can stop immigration. Better to try to get ready to ensure the exercise of the new fundamental rights.

In this context the concern that international terrorism exploits the migration of asylum seekers is strong and the risk of accepting terrorists is concrete. However this can not be restrained to take stringent measures to combat the phenomenon of terrorism, but will not prevent to guarantee fundamental human rights that migrants are carriers.

I close by recalling Kant, knowing that if we do not look to others as simply a means but also as an end, human rights will be able to consolidate and enrich themselves.

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