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The Reverse of the Right: The New Rights

Epidendio: "When we lose sight of the transcendence, rights become idols."

Rimini, August 26, 2014 – "Right is some kind of pragmatic anthropology: a big selfie of our society. In an era during which social rights become smaller, new rights surface. Originally born to limit power, law is nowadays providing governments with a large superpower." These are the words used by Andrea Simoncini, Professor of Constitutional Law at the University of Florence, to introduce the panel discussion on the theme of human rights and to present the speakers: Orlando Carter Snead, Director of the Center for Ethics and Culture, University of Notre Dame, USA and Tomaso Emilio Epidendio, Paralegal to the Constitutional Court.

Snead, right off the bat, reiterated the fact that human rights "are not bestowed by the state, thus they cannot be taken away from people. Such rights were born in response to the atrocities committed in the 20th century." Theoretically, they have a positive value. However, the current rhetoric about new rights demonstrates a reduced vision of the person and the common good. The anthropological background where the petitions for the new rights are made, based on an exasperate individualism, sees man as a "single atom, who only looks at himself. [...] The person is conceived as a bundle of desire and wills, as a mere consumer who establishes instrumental social relationships to reach his own goals". Natural, social and juridical obligations cannot be opposed to human desire, and at the same time, "Nobody can claim a right over me," Snead continues. In such context "autonomy is the apex of the ethical good and the person is seen as an autonomous will. Therefore, human rights serve the subject's free choice." To this extent, the right to have a child, where "the child becomes the object of his parents' desire, thus welcomed or rejected by them only in as much as he responds to their expectations," Snead remarks that the validity of the desire for paternity/maternity needs to also be combined with the child's right to protection of his personal dignity. In fact, he cannot be used as a means or as an object: he has his own intrinsic value. This is an example to shed light on the "urge to recover a different understanding of the human person and its heart."

Epidendio remarks that in a 1975 document by the Pontifical Council for Justice and Peace "The Church embraced the idea that the terminology of human rights could transmit humankind's moral progress. A person's fundamental rights, beginning with his inalienable dignity, in the past were conceived in the same way both from the Catholic and the lay culture." This is no longer true for "the current epoch, characterized by the rights against...", where rights are constantly opposed to prohibitions, in a continuous and belligerent fight generating only contrast and confusion. On a theoretical level, human rights is "a language, the promise that the state will make a wish come true," while on a practical level, they are currently reduced to "an individualistic language, which progresses by impositions, without exactly saying what is actually imposed and why it is so. In the current rhetoric of rights, some things are openly said, while others are omitted." Just to remain in the topic of the right to a child, for example, "resorting to IVF multiplies the parenting roles. At best, it distinguishes the genetic mother from the surrogate one, but the child is regarded as a mere by-product of fertilization. If all of this were recognized, it could also imply that the



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state is responsible for all the costs implied in the IVF process.” Therefore, the jurist Epidendio maintains that “we need to bring the discussion back to what the rhetoric of new rights overshadows, both in qualitative terms (by restricting freedom and further subjecting people to the power of the state) and quantitative ones (by claiming unsustainable social costs).”

Regarding the juridical grounds, Epidendio remarks that reopening the discussion could be dangerous. It could, in fact, risk to conceive laws as an expression of values, leading to the consequent and dangerous identification between rights and morals. Though maintaining the proper distinction between the two levels, Epidendio recognizes that “the loss of the transcendent horizon of the law makes it an absolute and thus an idol.”

Simoncini concludes: “New rights needn’t being demonized, because they are the expression of an entreaty, however, it’s important to evaluate its answers adequately. Does the right to have a healthy child exist? Is it legitimate to proclaim that happiness can only coincide with the absence of illness? What is the social cost we are keen on paying so that this right is protected by law?”. These are questions provoking a deep juridical reflection on the unexplored territories of the new rights.

(F.Pi.)

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