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"Progress" and the Church in the Context of Human Rights: A Council of Europe Experience

Abstract: Human rights have become an instrument of "Progress", understood as a license for satisfying every conceivable human desire, in the service of a "Utopia" understood as a state of affairs in which all human rights are perfectly realized. The Council of Europe and other similar international bodies have become convenient venues of their instantiation. What results is endless proliferation of human rights, insistence on their amalgamation so that any distinction from the categorical civil and political rights be eliminated and, ultimately, trivialization of human rights. Meanwhile, the Catholic Church has something important to say on all the critical points of current public debate of the matter. Yet, its representatives all too often take a passive stance in all those varied expert bodies in the Council of Europe and elsewhere, where "Progress" so conceived is being forged. The article pleads for a change.

Keywords: human rights, the Council of Europe, progress, the social doctrine of the Church

Abstrakt: Prawa człowieka stały się instrumentem "Postępu", rozumianego jako licencja na zaspokojenie wszelkich ludzkich pragnień, w służbie "Utopii", rozumianej jako sytuacja, w której wszystkie prawa człowieka są w pełni zrealizowane. Rada Europy i inne podobne organizacje stały się wygodnymi forami legitymizowania i prawnego sankcjonowania tych aspiracji. Efektem jest niepowstrzymana proliferacja praw człowieka, żądanie ich amalgamacji poprzez uznanie wszystkich praw za tak samo kategorycznie obowiązujące, jak prawa obywatelskie i polityczne, zaś ostatecznie – trywializacja praw człowieka. Tymczasem Kościół Katolicki ma coś ważnego do powiedzenia w odniesieniu do wszystkich najważniejszych punktów debaty w tej kwestii. Lecz jego przedstawiciele często zachowują się pasywnie we

wszystkich tych rozmaitych ciałach eksperckich Rady Europy i innych podobnych organizacji, gdzie wykuwa się tak rozumiany „Postęp". Artykuł postuluje zmianę tego podejścia.

Słowa kluczowe: prawa człowieka, Rada Europy, postęp, nauka społeczna Kościoła

Introduction

After 20 years of experience working as an expert and negotiator at various international organizations such as the Council of Europe, the ILO and the UN in the area of human rights, particularly, social rights, I have come to a conclusion that human rights have become a vehicle of a particular kind of "Progress" which marches through the institutions to make the world over. From a barrier guarding the individual from government oppression, human rights have evolved into a license for satisfying individual appetites complete with the injunction for societal affirmation. The Church, with its message of "thou shalt not" is a natural enemy. "Progress" so conceived is not only anti-Christian. By turning human rights into an expedient political tool, it trivializes them. In all those international organizations the Holy See is present, but is not heard often enough. In the halls of the Council of Europe the Catholic point of view or, under those circumstances, Catholic heterodoxy on human rights is heard loud and clear mostly on those solemn albeit rare occasions when popes appear to address it. But even then, the clarity of their message is dispersed by the pomp and circumstance. Presentation of the Catholic point of view is all the more needed at the level of numerous technical committees and expert groups where the mundane work on the programmatic and legal human rights texts takes place.

Arguably, the Catholic Church seems to have an understanding of the ontology and epistemology of human rights which is better than the prevailing "progressive" orthodoxy. The Judeo-Christian ontology of human rights reveals their proper foundation, scope and ways of protection. The Catholic social teaching properly relates social human rights to civil and political rights and to social policies. Finally, the Catholic moral teaching admonishes that "what is right for me" is not necessarily "right". Given those strengths, the Holy See should unswervingly proffer, what is here called, the Church's heterodoxy of human rights and do it in a language which will resonate in the increasingly post-Christian West.

Human Rights as Vehicles of "Progress" and the Need to Prevent Their Trivialization

The 18th century European Enlightenment ushered into national laws liberal democratic constitutions with their bills of rights. After the atrocities of World War II—most notably—the Holocaust, a general consensus has emerged that the human individual must never again be left alone to face the formidable power of the Leviathan. Governments must be bound by international guarantees of human rights for the violation of which both states and their functionaries should be brought to account under international law. Its milestone manifestation was the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948, followed by two fundamental, legally binding 1966 international covenants: one—on civil and political, while the other—on economic, social and cultural rights. As the Cold War-time negotiations on the texts of those covenants dragged on, they could not come into force until 1976. In the meantime, democratic states of Europe and the Americas adopted regional instruments, similar in scope and design. Essentially, civil and political rights were declared categorically binding upon states parties, while economic, social and cultural rights were to be implemented gradually, to the maximum of resources available to each state party from domestic and international sources.

Three important developments marked the evolution of national and international human rights protections ever since: (1) "sacralization" of human rights leading to their proliferation; (2) legislation by reinterpretation of the law by judges and legal experts; and (3) rectification of human wants and satisfaction of appetites by turning them into rights. An epistemic community of experts, advocates and political activists has emerged to manage that process. The logic of collective action has set in to give it dynamism and a particular political direction. Consequently, human rights have become a vehicle of "Progress" [Kuźniar 2000: 34-47].

The post-Holocaust guilt in Germany, Austria and in other Western societies tainted with various degrees of collaboration or connivance with the Nazi "Global Solution" created a fertile ground for sacralization of human rights. Later, in the 1960s and 1970s, with the ideological collapse of the socialist project, as modern capitalism and "welfare state" rendered the working class conservative, the postmodern ideologues conceived new classes of the "oppressed" or "marginalized": women and the ever growing categories of "minorities" in need of protection against "structural oppression" by the "majority" [Hicks 2011]. The erstwhile sacralized human rights have thus become a convenient vehicle of "Progress".

Activists and lawyers have become its ministers and courts of law as well as multiple *quasi*-judicial bodies, domestic and international—its temples [Delsol 2008: 3-5, 76-79].

As Anthony Julius put it: "A human rights discourse now dominates politics; there is a powerful human rights 'movement'. It is new secular religion of our time. Politics itself has been juridified. Liberalism provides the terms and defines the tone in which both Europeans and Americans now address their political affairs. The post-leftist appropriation of this discourse has been in the development of a 'transnational progressivism' or antinational cosmopolitanism. It deprecates unrestrained state sovereignty; it endorses international and transnational legal institutions; it champions human rights against national security considerations; it accepts the liberal critique of imperialism. (…) The new militant is not the party sectarian but the NGO activist" [Julius 2010].

Sacralization of human rights led to their proliferation. In Western democratic countries, opposition to human rights became politically impossible. At the time of this writing, there were well over a hundred of human rights instruments at the international level, i.e., covenants, conventions, protocols, charters, declarations, codes, etc. regulating state behavior with varied legal rigor. They grant a litany of civil, political, economic, social, cultural, rights to individuals in general, to certain specifically protected categories of individuals, to groups of individuals, and so on, and so forth. Already in 1981, a US UN Ambassador, Jeane J. Kirkpatrick, observed before the UN General Assembly 3rd Committee that "… an effort has been mounted to deprive the concept of human rights of specific meaning by pretending that all objects of human desire are 'rights' which can be had, if not for the asking, then at least for the demanding. The proliferation of 'rights'—to a happy childhood, to self-fulfillment, to development—has proceeded at the same time that the application of human rights standards has grown more distorted and more cynical" [Kirkpatrick 1981/2: 198].

Still, human rights have been on the march. For the activists, human rights embody their version of "Progress". "Progress" must presuppose a Utopia. In this case, Utopia is when all human rights are perfectly implemented. As that can never happen in any country, no matter how liberal, democratic and economically advanced, more rights will always be needed. Apart from the universal protections of the two UN human rights covenants and similar regional conventions, already mentioned above, specific protections have been afforded to the racially

discriminated, women, the tortured and/or cruelly, inhumanely or degradingly treated or punished, children (i.e., persons up to 18 years of age), migrant workers and their families, those in danger of forcible disappearance, and persons with disabilities. Currently, in the pipeline are the rights of the elderly and, probably, the rights of girls. Increasingly, demands are being raised to recognize the rights of animals and the rights of plants. Theoretical foundation for those "rights" have already been laid out [Smith 2008].

In its landmark 1978 judgment *Tyrer v. UK* the European Court of Human Rights adopted into the international human rights law the "living Constitution" doctrine invented by the US Supreme Court. The Human Rights Court held that the European Convention of Human Rights and Fundamental Freedoms "is a living instrument which … must be interpreted in the light of present-day conditions". Consequently, the Court found that that same law of the British Isle of Man which, until that judgment, had conformed with the Convention, suddenly—by fiat of the Court illuminated by the judges' understanding of "present-day conditions"—began to violate it.

Under the static law doctrine, what the constitution or a human rights treaty permitted at the time of its enactment is permitted forever. Only the sovereign people could bring about change by amending the constitution or sovereign governments by amending a treaty. However, under the living law doctrine, the politically unaccountable judges might write into the law their own political preferences. The limit is their imagination and the sense of propriety. In fact, judges (and soon also other lawyers and activists) happily embraced the living constitution and living treaty doctrine to pronounce themselves authoritatively on controversial issues of social policy and social morals which in a democratic society properly belong to the province of politics [Scalia 2009: 13-15]. Such legislation from the bench clearly violates the separation of powers [Delsol 2008: 44-45].

In the heydays of the post-Cold-War-end-of-history enthusiasm a World Conference on Human Rights convened in 1993 in Vienna. It adopted a Vienna Declaration and Programme of Action containing a plank which, as the so-called "agreed language", has ever since been endlessly repeated in all possible international documents, even remotely related to human rights. It reads: "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis". In the virtual reality of "living

law" that internationally endorsed phrase is used to amalgamate the financially expensive and therefore politically-laden and—to a considerable extent—aspirational economic, social and cultural rights with the categorically enforceable civil and political rights, without formally amending the relevant international treaties which explicitly and appropriately differentiate between those two categories of rights. It has been persistently claimed that, by virtue of that statement, the "international community" has once and for all resolved in principle that economic, social and cultural rights are identical with civil and political rights and must, therefore, be treated in the same way in all aspects of their application and implementation. All kinds of manipulations and reinterpretations of the treaties, which obviously state otherwise, are therefore justified.

Apart from the naiveté of the belief that social problems and aspirations which social rights denote could be resolved or satisfied by legal fiat, it is simply not true that those two sentences of the Vienna declaration were ever intended to mean what has ever since been claimed they do. Those sentences represent a hard-fought compromise between the United States and other Western democratic countries on the one hand, and Communist China, together with such other "friends" of human rights as Syria, Iran, Iraq, Cuba, Myanmar, the Sudan, Libya, North Korea, Malaysia and Yemen on the other, which claimed the supremacy of economic, social and cultural rights over civil and political rights as culturally "Western"—a long-standing practice of oppressive regimes. The United States threatened not to subscribe in Vienna to any document which would question the universality of human rights by downplaying the civil and political rights without which human rights are deprived of any content and meaning [Lewis 1993a 1993b; Riding 1993; Sciolino 1993].

The activist judges, human rights lawyers and professional advocates have formed an epistemic community which semi-autonomously sets the human rights agenda and uses human rights and their implementation and verification procedures, nationally and internationally, to override or circumvent the national democratic process and national sovereignty [Haas 1992: 3; Lilla 2017: 113]. The experts and activists enjoy political and oftentimes financial support from progressive governments and private foundations who seek to export their moral and political values to others by means of legal edict. International organizations, the Council of Europe among them, are a natural venue where such efforts materialize into countless resolutions, legal drafts and, finally, international treaties, thus receiving international community's official imprimatur. This is how, first sacralized, and

then progressively multiplied and reinterpreted human rights have become instruments of "Progress" itself. Of particular interest here are their activities in the areas of social rights and policies and social engineering, which involves morality. They are not only politically sensitive; they often constitute a fundamental challenge to religion and religious beliefs [Marthoz & Saunders 2005: 8].

There is no conspiracy in what the epistemic community of human rights represents and pursues. With over a hundred human rights instruments at the international level, countless national regulations and a plethora of national and international human rights enforcement and verification bodies and procedures, arcane knowledge is indeed required to operate such a complex system of laws and institutions. The emergence of a respective epistemic community is thus quite natural. Similarly, natural is the dynamism of its activities. It is governed by the logic of collective action whereby in a society special interests tend to trump majority interests as individual gains for the members of the special interest group by far exceed the individual costs to be borne by the members of the society at large. While benefits are concentrated, costs are diffuse [Olson 1965]. Thus, the odds are usually in favor of the activists. Their knowledge of the subject-matter will surely be superior and their dedication to the cause stronger than those of the skeptics. Finally, few will be prepared to bear the opprobrium of enemies of human rights.

Under the "living treaty" doctrine and with functional support of international organizations, like UN and the Council of Europe, the "logic of collective action" results in endless proliferation of human rights, ultimately leading to their inflation and trivialization. To prevent that a new heterodoxy of human rights is needed. It would seem that the Church does not only have a stake in reviving human rights – that once great transformative idea of human civilization – but has also something important to contribute to all the key points of current controversies over the future of that idea. Where postmodern orthodoxy reigns supreme, perversion of the law starts with the perversion of the language. A language which would rectify that, while striking a chord with the post-Christian, is therefore a must.

What Is to be Done?

"People are inherently valuable" or "rights come from wrongs" (?)

Let us start with the very ontology of human rights. That unique achievement of Western civilization was possible because of its Judeo-Christian roots. Hence, the memorable phrase of the 1776 American Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed

by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." Hence, the most popular representation of the 1789 French Declaration of the Rights of Man and Citizen fashioned in the shape of the Tablets of Moses in which God inscribed his Ten Commandments [Landauer 1995: 434-5]. Enlightenment, in fact, instantiated into positive law a great transforming Judeo-Christian idea of man created in the image of God. That needs to be constantly repeated and reminded, given the dominant postmodern "narrative" presenting Western civilization as socially oppressive and politically imperialistic. The narrative which plays into the hands of those actually oppressive regimes which wish to present international guarantees of human rights as manifestations of Western "cultural imperialism".

The Judeo-Christian tradition arguably forms a better foundation of human rights than the progressive orthodoxy essentially holding that people are inherently valuable because they are people or, for that matter, the so-called "experiential" theory that conceives rights as mirror images of ultimate wrongs [Dershowitz 2004]. Is that so? The latter theory strikes by its obvious restriction to the most horrific "wrongs" over which a general consensus could reasonably be expected and, consequently, to a mere handful of rights which might eventually ensue. And even that could not be assured, as evidenced by those multitudes and their political patrons who consider Israel a "crusading state". For them even the Holocaust does not meet the standard of ultimate "wrong" from which rights would spring by "experiential" concord of humanity. As for the former, there is a long-established view among radical ecologists who believe that the Earth is a single living organism and conclude: "The Earth has cancer and the cancer is man" [Gregg 1955]. What about moral pessimists, like Rousseau, who highlight the malevolence associated with human interaction? What about people who are depressed, suicidal or self-mutilating? In view of all those quite commonly-held beliefs and human practices, the words: "So God created man in his own image, in the image of God created he him; male and female created he them." [Gen. 1:27], which profess human exceptionality in nature, provide a firmer foundation of human rights. Human as sovereign individual set apart from nature and endowed with reason, free will, moral sense (with inability to command him/herself out of moral laws) and the need for the transcendent. The Book of Genesis offers perhaps the least obvious concept there is. But, if one organizes life on that principle, i.e., that there is a divine spark in each human person, it not only gives meaning to human life, but proclaims precedence of the rights of humans over state laws and ultimately lays ground for the formation of a democratic political order [Peterson 1999: 467-9].

From such ontological perspective, human freedom and human rights assume proper sense and direction. The God-ordained unalienable human right to the "pursuit of happiness" is not about defying community and pursuing trivial pleasures by yielding to instinct or satisfying whims. It is about making life meaningful to oneself and making a positive mark on the life of the community. In other words, human rights are there to actuate individual, not government's, responsibility for one's happiness.

All the important building blocks of the Catholic heterodoxy of human rights are to be found in papal addresses by John Paul II and Francis to the Council of Europe and the European Parliament. That human rights as legal rights are hollow without a community that believes in them. That community must share certain underlying values. Those values are Judeo-Christian values; they derive from human nature formed by God in his image. That human rights must not set the individual in opposition to his or her community. Instead, they must link the individual to the concept of *common good* or *greater good*. That rights cannot be separated from duties, as my right is your responsibility. That "limitless" rights become a source of conflict; a self-centered conception of rights leads to the disregard for and instrumentalization of others. Finally, that human rights, which reflect human transcendent dignity, protect the individual from government tyranny [John Paul II 1988a 1988b; Francis 2014a 2014b].

All that represents an optimistic perspective of human rights as instruments of genuine fulfilment of the self and harmony between the individual and the community. It is strikingly different from the dominant post-modern orthodoxy of human rights as "emancipators" from constraints of duty and responsibility, especially, as "protectors" against societal "oppression". The government is the guardian of "freedom" so conceived and provider of "happiness" thus ordained. It is a travesty especially in democracy of which its avid observer forewarned already 180 years ago when writing about an "immense and tutelary" government busy securing the gratifications and facilitating pleasures of a "multitude of men all equal and all alike" and worrying only that it might not "spare them all the care of thinking and all the trouble of living" [Tocqueville 2000: 869-70].

"Social rights can be guaranteed by fiat" (?)

An area of human rights in which the progressive orthodoxy manifests itself quite clearly are the social human rights persistently redefined as categorical claims on the society to provide for everyone regardless of their particular circumstances

and economic realities. In that regard, the Catholic social teaching offers not only a more reasonable but also more practicable approach to those rights and a robust platform for sensible social policies necessary to turn those aspirations into reality.

The social teaching of the Church conveys the message that material wellbeing alone will not solve social problems; spiritual uplifting must come alongside, if not precede material provision. Social rights are implemented in and by the community. Therefore, they must not set the individual who is unconditionally entitled against the community which is categorically obliged. Consequently, the state has but a subsidiary role. Turning people into clients of the state is not the right path to social progress.

The social teaching stresses the *dignifying* relationship between the worker and work as well as the importance of private property without which one is a servant of another or a client of the state, and the "'natural human right' to form private associations" in defense of the interests of both workers and employers. It focuses on the autonomy of the individual, the autonomy of the family and the communal nature of social wellbeing, and it values social cohesion. Consequently, the social teaching "insists on necessary limits to State's intervention and on its instrumental character, inasmuch as the individual, the family and society are prior to the State, and inasmuch as the State exists in order to protect their rights…" [*Centesimus Annus* 1991: *§§*6-11, quote: *§11*]. Within those limits, the state is bound to follow in its policies the principle of *subsidiarity* in allowing human industriousness and entrepreneurship to cement individual autonomy and produce wealth, and the principle of *solidarity* in defending the weakest and providing the necessary minimum support for the unemployed worker [Ibid.: *§15*]. Regard for the other, respect for justice, balance of rights and duties, stewardship and prudence in the use of resources and care for common good, provide a proper moral direction for the provision and exercise of social protections. Respect for human life, dignity, worship, association and ownership of things necessary for physical survival and personal autonomy certainly precede the state, thus, they are categorically binding. Social rights, however, may be ensured only within a society, in the context of human solidarity. Primary responsibility for the exercise of economic rights "belongs not the State but to individuals and to the various groups and associations which make up society. The State could not directly ensure the right to work for all its citizens unless it controlled every aspect of economic life and restricted the free initiative of individuals" [Ibid.: §48]. When it comes to the area of social rights, which address "forms of poverty and deprivation unworthy of the

human person", the social teaching does not put much trust in the Welfare State, referred to as the "Social Assistance State": "By intervening directly and depriving society of its responsibility, the Social Assistance State leads to a loss of human energies and an inordinate increase of public agencies, which are dominated by bureaucratic ways of thinking than by concern for serving their clients, and which are accompanied by an enormous increase in spending. In fact, it would appear that needs are best understood and satisfied by people who are closest to them and who act as neighbours to those in need. …[C]ertain kinds of demands often call for a response which is not simply material but which is capable of perceiving the deeper human need". Social policies should overcome the "individualistic mentality" and focus on "the family as their principal object", "by providing adequate resources and efficient means of support, both for bringing up children and for looking after the elderly, so as to avoid distancing the latter from the family unit in order to strengthen relations between generations" [Ibid.: §39].

The social teaching of the Church has played a role in the understanding and implementation of social rights, by practically addressing key social problems of the day: breakup of families, demographic crisis, persistence of social problems, and alienation. In many ways, it has also inspired the 1990s and early 2000s welfare state reforms in the US and the EU. Yet, it has been practically unnoticed in the Council of Europe which remained a bastion of the orthodoxy, focusing on the proliferation of social rights and their amalgamation with civil and political rights, a recent example of that being the so-called "Turin Process" initiated in 2014 with the objective of boosting ratifications of the revised European Social Charter and a collective complaints protocol thereto. With the "Turin Process" failing, a Drafting Group on Social Rights (CDDH-SOC) was set up under the authority of the Council of Europe Steering Committee on Human Rights. The original idea of the Secretariat was to produce a report which would again insist on the amalgamation of social rights with the civil and political ones to eliminate the reportedly existing "gap" in their protection. Over the four sessions of CDDH-SOC held in 2017-19 a representative of the Holy See was present in the room but restricted himself to a single statement at the final session in which he extolled the UN Sustainable Development Goals.

"The right to reproductive health" (?)

The "right to reproductive health" promoted through international organizations, such as the Council of Europe, must be considered here. Even though the Church believes that its rejection of abortion, as grounded in the Scripture, is not just right

but also nonnegotiable, sadly enough abortion on demand is now widely regarded in Europe as a human right. In view of that it is not helpful that the Church's moral doctrine lumps contraception together with abortion as manifestations of the same "Civilization of Death" [*Gratissimam Sane* 1994: 41; *Evangelium Vitæ* 1995: 10-11]. Its moral rectitude notwithstanding, the political effectiveness of the Catholic heterodoxy in post-Christian Europe is thereby grossly undercut. Still, something can be done to at least contain what the papal teaching calls the "barbarism" of the "right to abortion" [*Evangelium Vitæ* 1995: 11].

Not being able yet to formally inscribe into international human rights treaties "the right to abortion", the forces of "Progress" have been incessant in trying to subsume that "right" into the right to the highest attainable standard of health, which has been internationally recognized in such treaties. Whenever possible, the phrase "right to reproductive health" has been injected into international legal documents dealing with human rights and now enjoys the fateful status of "agreed language". For the proponents, the "right to reproductive health" includes abortion and contraception. A prime recent example of legal sophistry in that regard can be found in a 2018 UN Human Rights Committee (mis)interpretation of the right to life [General comment No. 36: §8] guaranteed under the International Covenant on Civil and Political Rights. Admissible state regulation of abortion has been restricted by the learned legal experts in so many ways that nothing short of granting abortion on demand would comply with those restrictions. In their general comment the Committee did not concern itself in the least with the fetus's right to life. Another was the 2019 UN Nairobi Summit masquerading as an official review of the 1994 Cairo International Conference on Population and Development; an attempt was made to sneak into the final document new "agreed language" accepting unfettered access to abortion as a "human right" [Joint Statement 2019].

In the Council of Europe and elsewhere government representatives may not be instructed to openly confront such usurpations. But there is no reason why the representatives of the Holy See should be passive. At literally every instance, a reference to the "right to reproductive health" or "sexual and reproductive health and rights" is proposed, they should be demanding an explicit annotation that there is no internationally recognized right to abortion and contraception. Consequently, some might be deterred from trying to inject such deceitful references, while others—mobilized to object against perverting the law (regardless of their particular stance on abortion]. Still others, might have a change of heart. After all, supporters usually argue that abortion should be "safe, legal and rare". Would

they likewise qualify any other human right? For those who once succumbed to the "freedom of choice" argument, the glaring arbitrariness of such "choice" might become apparent. At times abortion advocates have been called out when trying to hijack international organizations for their purposes [Holy See and Trump administration 2019; Joint Statement 2019; Smith 2019]. Yet, it is critical that it be done systematically and consistently, at their every attempt. Otherwise, *qui tacet, consentire videtur.*

"Nondiscrimination on grounds of gender and gender identity" (?)

Gender, in the context of human rights, notably nondiscrimination, is another important issue on which government representatives at the Council of Europe keep silent but the representatives of the Church ought to be spreading their heterodoxy. Gender theory and gender ideology set out a political agenda which calls for ever more intrusive legal protections against alleged discrimination. The 2011 Council of Europe Istanbul Convention on combatting violence against women and domestic violence mandates states parties to introduce all kinds of sensible and needed protections against those evils, including criminalization of forced marriages, female genital mutilation, and forced abortion.

Regrettably, the convention also turns gender theory and ideology into law by using such concepts as "historically unequal power relations" between women and men [Preamb. §9], "structural nature of violence against women" [Preamb. §10], "substantive equality" [Art. 1(1)(b)], gender as "social construct" [Art. 3(c)], "gender identity" [Art. 4(3)], and by stigmatizing "men and boys" who are singled out as perpetrators [Art. 12(4)] or advocating gender theory/ideology-based education [Art. 14(1)(2)]. Thus, it legally privileges gender theory as the explanation of violence against women and in families and gender ideology as the directive for government policies in regard to such violence. The convention legislates that the "root cause" of violence against women and in the family is patriarchy. A cursory consultation of evidence seems to offer alternative (if not, better) explanations. The real root causes of violence against women and in the family are to be found in such personal characteristics of spouses or partners as addictions, substance abuse, psychological immaturity, family break-up, etc. And yet, the Istanbul Convention mandates states parties to engage in extensive social engineering to revise the "traditional" morals, beliefs and practices which it summarily considers as "stereotypes". In the national debate over its ratification a prominent Polish sociologist opined that "the convention is a vehicle for dismantling the family" used by "homosexual groups" in their attempt to subvert the deepest structures of

society [Staniszkis 2014]. For a former president of the Polish Constitutional Court and national Human Rights Ombudsman the convention might "rise a suspicion to be an attack on our civilization" [Zoll 2014][1].

Even if they were allowed to in their instructions and wished so personally, government representatives will find it very difficult to confront in the Council of Europe or similar international fora such officially sanctioned assertions of gender theory and ideology. Nobody in their right mind supports any kind of actual discrimination against women let alone violence against women or in families. At the same time, by questioning the tenets of gender theory and ideology, presented as "scientific" and "research-based", one would easily render oneself vulnerable to accusations of bigotry. Last but not least, government officials hardly ever are competent enough to challenge the ideologues of "Progress" on the merits of their "research".

But the Church has a much higher stake in all that. After all, the matter is not about playing with words and quibbling about their definitions. By first diminishing ("gender as social construct") and then altogether negating the biological and psychological distinctions between men and women (gender as "identity" or "performativity"), gender theories underwrite policies which, under the guise of "antidiscrimination", ultimately target natural family as the source of oppression of women and children and transmission of traditional, i.e., "oppressive", values and morals. The most vulnerable in the society are the first victims in that war on culture. And, as a once progressive prominent writer discovered: "the destruction of traditional family had at its real target the destruction of Biblical morality" [Phillips 2018: 100].

In 2019 the Vatican Congregation for Catholic Education issued a document: *'Male and Female He Created Them': Towards a Path of Dialogue on the Question of Gender Theory In Education*. Indeed, it does contain a Catholic heterodoxy; a fundamentally positive vision of men and women as equal in dignity and mutually reciprocal parts of humanity. It starts with the straightforward premise that humans have a nature which they must respect and cannot manipulate at will. That human nature forms the basis of the "life-giving relationship between men and women", which in turn founds the natural family [Male & Female 2019:

[1] In 2014 professor Andrzej Zoll criticized the Istanbul Convention for "its very slack, imprecise language filled with internal contradictions" and singled out Art. 12 on the need to uproot gender "stereotypes", as especially dangerous. In 2020 professor Zoll recanted his 2014 opinion.

§§30-51, quote: *§31*]. Human nature and natural family precede the sociopolitical order of the state which must recognize them; human rights and family rights must be respected by the state as they are anchored in human dignity. Hence, state's subsidiarity and primacy of the right of families to the education of their children in accordance with their values.

As to the contents of education in regard to sex and gender, the document rightly distinguishes between ideology of gender and gender research (which can surely be a legitimate field of study). It further shows how over time gender theories blended into a political ideology which allegedly conveys a neutral conception of the person and of life, yet in fact reflects an anthropology opposed to faith and to reason [Ibid.: *§1*]. "In all such theories … there is agreement that one's gender ends up being viewed as more important than being of male or female sex. The effect of this move is chiefly to create a cultural and ideological revolution driven by relativism, and secondarily a juridical revolution, since such beliefs claim specific rights for the individual and across society" [Ibid.: *§20*]. "Freedom is confused with the idea that everyone can act arbitrarily … and everything were possible and permissible" [Ibid.: *§22*]. "This has led to calls for public recognition of the right to choose one's gender, and of a plurality of new types of unions, in direct contradiction of the model of marriage as being between one man and one woman, which is portrayed as a vestige of patriarchal societies" [Ibid.: *§14*]. The concept of family devoid of the generation of new life "is thus emptied of meaning" [Ibid.: *§21*]. Notably, the document rightly insists on the necessity to "combat all expressions of unjust discrimination" and to educate "*to respect every person* in their particularity and difference, so that no one should suffer bullying, violence, insults or unjust discrimination…." [Ibid.: *§§15, 16*].

The Vatican document is, however, coached in a language so esoteric that its utility in the context of expert discussions in the Council of Europe and similar bodies, let alone for a pastor on the parish wishing to illuminate his flock, would surely be problematic. Meanwhile, it would seem that a more direct confrontation with the prevailing orthodoxy might be in order. Proliferation of social rights is contained by finite resources available to the otherwise eager politicians. The tragic practice of abortion is contained by its intrinsically horrific nature. However, when it comes to the social and political implications of gender theories and ideologies, what is at stake is the very fabric of society, i.e., its basic structures, institutions and beliefs which make the society function. And the moral and cultural revolution, currently on the march, insidiously appears emancipatory (liberation of women) in its general

nature and irrelevant in its most bizarre (existence of over two dozen of "genders", gender "identities" and "expressions") implications; thus, not objectionable.

In the present-day "culture" of international organizations, the people of the Church are literally the last ditch of potential open resistance coming from representatives of the Western group. Thus, whenever gender theory or ideology and gender-based research is introduced as justification to claim rights or formulate policies addressing alleged "discriminations", they should be pointing out, first, to the scientifically flimsy foundations of that theory and research alike and, second, to broader social and political consequences of such policies.

Heavy ideologization of gender theory and gender-based research is already quite well-documented. The discipline has been marred by "idea laundering", i.e., production of "scholarship" by cross-referencing to ideologically-laden articles of other gender scholars. Facts are first victims of gender analysis, like persistent segregation by sex of professions in Nordic countries despite their level best efforts to eliminate "gender differentiation". No attempt has, so far. been made to revise the basic premise of gander theory. The second victim is solid research methodology, like persistent equating of outcome disparity with discrimination. Because of such "research culture" Peter Boghossian, James Lindsay and Helen Pluckrose (scholars who politically situate themselves on the left), were able to publish in 2017 and 2018 alone seven bogus articles in top-tier gender study journals which, when exposed, those journals had to retract [Melchior 2018; Boghossian, Lindsay & Pluckrose 2019; Pluckrose, Lindsay 2020]. A prominent liberal academic, Mark Lilla, opined sarcastically on the contents and validity of that scholarship: "More generally, they will be taught that nothing about gender identity is fixed, that it is all infinitely malleable. … A whole scholastic vocabulary has been developed to express those notions: fluidity, hybridity, intersectionality, performativity, transgresivity, and more. Anyone familiar with medieval scholastic disputes over the mystery of the Holy Trinity—the original identity problem—will feel right at home" [Lilla 2017: 86-87].

The consequences of that ideologization for society and polity go, however, far beyond scholastic disputes in the ivory towers of academia. The proliferation of political grievances dressed in the costume of human rights professes a particular "cult of the individual"—where subjective experience dominates over empirical evidence, where normal is labeled "normative" and, as such, reprehensible because "exclusionary", while transgression is celebrated as liberating, and, as such, demanded every protection of the law against "discrimination" and "intolerance",

where femininity and masculinity are under official assault as vestiges of "oppressive patriarchy", where family has been redefined into a temporary arrangement of any configuration among consenting adults, and where the ominous "right to choose" routinely privileges sexual impulse over responsible behavior. Speech is compelled to conform to "tolerance", now mandating unreserved affirmation of every lifestyle choice not explicitly interdicted by criminal law. Research and publications get castigated for asking the "wrong" questions or, even worse, reaching the "wrong" conclusions [A Letter 2020].

But perhaps most importantly, the natural family as the most basic societal institution is further undermined with all its attendant social problems. That "cult of the individual" for decades already inculcated as received truth at university humanities departments and taught in schools contributes to the environment in which children lack a consistent mother or father figure while the affirmation of their own sexual identity with its concomitant social roles may be obstructed when told that such identities are just a matter of individual choice which may well be transient. As a former social policy expert of *The Guardian*, concluded: "family disintegration and reformation did incalculable damage to children", with the lower classes being disproportionately affected [Phillips 2018: 97].

Conclusion

Human rights—one of the greatest achievements of Western civilization are being trivialized through their proliferation, amalgamation and politicization. By turning them into a secular religion, their ontic foundations have been undermined. If there is no divine spark in every human being, then human rights are at the whim of the state. If social rights are identical with civil and political rights then—as categorical—they do not limit government power but mandate government's omnipotence over the society and the economy. If unfettered abortion is a "human right" then the right to life, i.e., the foundation of all other human rights, is compromised. Under the guise of the "right to choose", it becomes the right to arbitrarily decide which life is worthy of living—an antithesis of unalienable human rights. Radical renditions of gender theory and ideology as foundations of human rights epitomize their politicization and trivialization. Not only do they revolutionize the most basic social institutions and social mores, but also give rise to violations of rights of other people and to social engineering on a massive scale.

When Jonathan Yaniv of British Columbia—a biological man who considers himself a woman and legally uses a female name Jessica—takes selfies in women's

restrooms or visits female beauty parlors to get genital depilation, he does all that claiming his right to nondiscrimination on grounds of his "gender identity and expression" [Slatz 2019]. When denied the procedure, he sued 16 salons before the British Columbia Human Rights Tribunal charging transphobic discrimination. The Tribunal had enough sense do deny his claim. But, grotesquely enough, it did it on what really is a technicality, namely that "scrotum waxing was not a service customarily provided by the Respondents" [*Yaniv v. Various Waxing Salons* 2019: 3]. The tribunal could not just reject Jonathan's ridiculous claim because the British Columbia Human Rights Code protects against discrimination on grounds of "gender identity". So does the Istanbul Convention in its Art. 4(3), so far, only within its scope. European "Yanivs" will have to wait to try their luck at courts until the EU Fundamental Rights Agency gets its way. And it has already reproached: "The EU treaties do not explicitly provide protection from discrimination based on gender identity, and only six EU Member States explicitly protect trans people from such discrimination" [Protection 2015: 8].

In Warsaw, Poland, the 2019 Women's Congress debated, *inter alia*, the need for "trans-species sisterhood" in the fight against the "objectification of the human and animal female"—a supposedly common feature of the patriarchal society, where "violence has a gender" (which can only be male) [Tutak-Goll 2019]. Among active panelists was Sylwia Spurek, a Polish MEP and formerly a deputy Poland's Human Rights Ombudsman. There obviously is a moral duty to treat animals humanely. Yet to equate women with female animals at, for all places, a Women's Congress was a manifestation of a new strain of rights proliferation (this time: animal rights) and ultimately trivialization of the rights of humans, as further undermining their uniqueness among Creation.

The above are recent examples of excess and mockery that have afflicted the most noble idea of human rights, seven decades since the Universal Declaration. From God's endowment to pursue meaningful life free of government oppression, human rights have been largely reduced to a job program for ambitious lawyers and ideological firebrands. In the Council of Europe and elsewhere there seems to be a growing sense that the special interests have abused the "logic of collective action", but there is also fear of calling them out on that. After all, human rights are the secular religion of our time a no one wishes to be labeled a heretic.

As an institution ministering to Christ set "for a sign which shall be spoken against" (Luke 2: 34) and which "has something to say" about human rights and

"human situations, both individual and communal, national and international" [*Centessimus Annus*: §5], the Church, as a prime representative of the civilization to which humanity owes human rights, should make its positions heard at every level of the Council of Europe and any other international organization activity, where human rights are being put at the service of the "Utopia". And it ought to be done in a language understandable to Western post-Christians. The truth needs to be told and the meek need to be inspired so that the trivialization of human rights may be arrested. Because the ambition for a world made perfect by human rights might stray to a place opposite of any Utopia. To slightly paraphrase Grant Gilmore's famous dictum: "In hell there will be nothing but rights and due process will be meticulously observed" [Gilmore 1979: 111].

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