

CIVIL STATUS, IDENTITY AND IDENTIFICATION

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Mr President, my dear colleagues,

Allow me to tell you how grateful I am for your invitation, which puts me in a dangerous position, as I am a non-lawyer among lawyers, and consequently I feel very exposed, addressing myself as a novice to specialists in very complex questions.

The very concept of civil status is not so transparent intellectually, even if it is administratively. As was just said, this expression situates the individual, first of all, demographically, and gives the State a vision of its population putting the emphasis on family, closest ancestors and descendants, and marriage. Such categories, of course, do not suffice to describe the real, objective situation, which it is necessary to quickly recall in order to explain why this separation, this dissociation, is not the principal problem.

For a long time, there has been no question of normal or classic families, made up of two married parents, a father and mother, and children born from their union, most often two children in the case of France. Single-parent families, recomposed families following a remarriage after a divorce, simple or plenary adoption, separation or divorce, are so many cases which impose the necessity of distinguishing between factual relationships and the categories in which they are registered in civil-status terms. All this, and much more, demarcates the huge separation between administrative categories and real life. Let us remember that countries like Sweden, and France too, are countries where the number of children born outside of wedlock is as large, or almost as large, as the number of children born in wedlock. New categories, such as the Pacte Civil de Solidarité (Pacs), in reality, increase to an even greater extent the proportion of people to be born or to live outside the official limits of marriage identity.

I would also like to add, although this is self-evident, that among the insufficiencies of civil status, which it is possible to accept or not, it is necessary to insist on the increase in the number of immigrants from countries where the family system is very different, where for instance bigamy or polygamy are accepted, both of which are not recognised by French law. These situations play a considerable role in practice, especially because they are taken into account, particularly where housing is concerned, in order to avoid an accumulation of relatives within a small space.

These weaknesses, these limits of civil status, have to be recognised, but I came here to say that these limits, which are self-evident and can be found in all institutions dealing with social reality in terms that are always a little too formal or a little too simple, are not insurmountable, and at all costs must not serve as a pretext for inactivity. This dissociation does not solve the problem. In the same way as the use of more efficient methods, this flexibility could even be generalised without making much of a change to the problems at hand. What some would refer to as a more sociological approach does not, obviously, seem to me to be a considerable improvement to the role of civil status. I would almost tend to suggest that it is necessary to treat this type of approach with great care, and this will in fact be an essential point of my presentation.

A description that is closer to reality would take into account ethnic origin, sexuality, professional activity (practised or sought), belonging to a tradition of one sort or another, and all variations due to affiliations or references that are of the utmost importance to the individuals concerned, but up until now, all this remains apart from definitions or information transmitted to or demanded by the State. Why does this inspire mixed feelings within us? The obvious reason is that, the better the State knows its population, the more it can intervene positively and in the interest of all individuals. But this also means it can intervene against groups, against individuals, particularly those who appear to be a threat precisely due to their affiliations, their roots, their beliefs and their practices.

So the first remark, which is more of an introduction, is that the first question to answer is that of arguments in favour or not in favour of extending the role of the State. This extension presents itself as being almost natural. Naturally, we are pleased that Social Security's support policies, and the necessity to prevent certain kinds of exploitation of minorities from other countries, indicate that the desirable tendency is to work towards an extension of the role of the State. If only to check, confirm and guarantee social rights, which were previously civil rights, then social rights, first and foremost labour rights, and now cultural rights, as well as the right to an accepted diet, a language, a religion, and rights that can be called generic, insofar as they concern 'gender', a word which is generally used to talk about sex-relations, the word sex itself being too limited and needing to be framed within the more vast topic of sexuality.

The advantage of the State being better informed is evident, but these drawbacks are even more evident, especially as they change the very nature of the State and its right to be informed or not of numerous opinions and practices that, currently, it has no knowledge of. Many people would quite willingly accept, or even demand, to give information to the State, as it appears to be a guarantee of certain institutions' legality. The most satisfactory response is that it is necessary to recognise the existence of cultural or social rights, and thus the role of the State as protector of all vulnerable categories of people. This implies keeping as much information as possible, in as controlled manner as possible. But this first part of the response must not be separated from the second: civil status must only have a demographic role. Knowledge of people's affiliations and characteristics must be encouraged, but more within a para-State framework, such as for instance political or sanitary enquiries.

Many even believe that, by strictly limiting the information available to the State, we run the risk of arriving at a purely administrative State, abandoning its role which consists of recognising social and cultural rights, as opposed to just civil rights. Those in favour of offering the State more information more systematically even insist on the necessity for greater capacity to protect minorities. This formulation, in itself, is not any weaker than the opposite proposal or position, as it is useful to disclose publicly whether people belong to a minority, whether by birth or by choice, in such a way as to allow the State to know where to focus its attention and its action in order to avoid incidents.

As for the idea that it would be possible to inform the State better in countries said to be democratic, which recognise many inalienable rights, including many individual rights, this remark has almost become ridiculous, since Europe in the 20th century has lived through a series of persecutions, massacres, genocides. Going back in time, remember that Europe has constantly been divided into three great branches of Christianity and that religious wars, in Westphalian Europe, had bloody consequences and brought about even greater tendencies towards the legal recognition of realities thus made more concrete. In France, Protestants did not regain their right to nationality until the eve of the French Revolution, but in Great Britain Catholics were not automatically granted nationality until long after the Revolutionary and Napoleonic era.

The debate I am currently evoking is a very real debate, which is often impassioned and fascinating. This debate cannot be initiated without taking into account the tragic consequences that we lived through during our 20th Century. However, we might take this thought further: who can ensure, today, that public and mandatory declaration of religious, ethnic or other identities, such as sexual or political, implies no danger for Jews, homosexuals, people of nationalities refused by various countries? We cannot reasonably expect Spain or France to grant the Basques the right to define themselves publicly as a nation.

Therefore, it seems more logical to consider that extending State intervention in many areas is complementary, not mutually exclusive, particularly in the case of protecting minority or vulnerable groups and the State's respect for identities and identifications recognised, or even proclaimed, by individuals, as to which the State should not impose a declaration featuring in a person's civil status. It is true that better informing the State makes it easier for it to act, but it is undeniable that the State, by imposing on individuals themselves the duty to make their beliefs and affiliations known, is penetrating into their private lives, and could even place itself in the service of the police.

In a democratic society, it is important for laws to be adopted by persons elected by universal suffrage. The State applies them, and must reduce to the minimum the initiatives it takes in order to make its job easier or to carry out repressive operations. The more a State's demands are limited, the less there is a danger that the political and administrative State, reaching beyond its set role, will create a repressive atmosphere in a highly bureaucratic country, by removing, for a lot of individuals, the possibility to carry out their actions in the way that is convenient for them and is not necessarily convenient for the administration. The classical formula of democracy is that decisions are formed from the bottom up, which is to say, by specifying that the application of executive power must be controlled, and occasionally condemned, by legislative and judicial powers.

Rights belong to individuals. Not as individuals, not as members of such and such a national or other group, but because rights belong to individuals because each individual, at least in our idea of the world, is a subject who has rights of himself, because he bears his legitimacy within him.

To quote a well-known saying, man has the right to have rights. It is not the individual as such who bears those rights; but he bears them as a human being, universally speaking. We all have rights that must be respected by all social and political powers, including parties and assemblies. In fact, it is often groups that are without rights or are denied them who attach the greatest importance to the public recognition of their rights. But it is important not to confuse rights, identity and identification, as this almost infallibly leads to the creation of multidimensional holistic groups, like those that Samuel Huntington referred to as civilisations, whose relations may be, in the name of their holistic nature alone, only relations of competition or war.

The great movement which has swept many countries for several centuries, on the contrary, is the rupture of holistic systems, as they were called by Louis Dumont, through the separation of powers and universal suffrage. We have progressed, although not without difficulty, beyond civic rights towards recognition and the reinforcement of social rights, then cultural rights, and also women's rights or all other categories defined by a gender, a sex, or sexual behaviour.

The limitation of the State's powers in the area of personal rights completes the State's effort, particularly in poor countries or for poor categories, to reinforce and guarantee the application of rights recognised by Parliament. It would be a very dangerous trend reversal to accept a larger control over private life by the State, just as the recession of social or cultural rights would be the other side of the recession of democracy, which would then submit itself to force and influence.

Today, we are very far from Hegel's thought, which placed at State level the realisation of the Spirit, *der Geist*, leaving aside the administration of civil society, the *Bürgerliche Gesellschaft*, in his vocabulary. Problems do not call sovereignty into question. We are separated from the thought of Hegel and his disciples by two centuries of international and civil wars, coups d'Etat, and destruction of rights. It is not a paradox to defend the idea of State intervention, as limited as possible and respectful of personal rights, as this limitation is an effective guarantee of the respect for individuals as being imbued with recognised rights, which is important for civil peace, the respect of rules and the non-violent treatment of social problems. The individual, as a subject, bears within him his legitimacy, which is to say that today we no longer speak of the divine nature of Man, or even of the definition of Man by his position in evolution, progress, or what have you: we essentially define the individual by his existence as a subject, having universal characteristics. Today, what we refer to as an individual, or respect for the individual, is above all the respect for what is universal in human life, which is to say, rational thought on the one hand, and respect for what we call human rights on the other.

This is opposed, of course, to the demand that many States make to hold as much information as possible in order to defend the rights of individuals more actively. Following this route, one would quickly come to the conclusion of reducing personal rights to citizens' rights, while social, cultural, generic rights are rights that have their roots in, whose existence is based on, affirmations we might refer to as metasocial, as were, in the past, religious or philosophical references, but which depend here on the fact that, in a society that is at the same time mixed, in movement, containing a large number of sub-populations, it would be impossible to defend the rights of citizens efficiently. The existence of a State religion or a one-party system are contrary to democracy, as long as you discount Lutheran State churches in Nordic States, which are assuredly very democratic, or even the case of the United Kingdom, where the sovereign is also the head of the Anglican Church. But in these countries, I would say that there is better to do to defend democracy and progress than worrying about a situation that is not worrying. Conversely, the greater the pluralism, the more all types of oligarchies are kept under control, and the more the State, exerting the strongest pressures on the limits of individual liberties, is armed to fulfil its role. Against the power of the globalised sectors of the economy, it is important not to reinforce the power of the State over individuals, but the activity of individuals, the capacity, the willingness of individuals as working citizens or members of a minority, to protect their rights with the support of a State which limits itself in its demands, but is capable of having them respected.

The less one reinforces affiliations, the better each person's liberty is defined, as well as his right to make choices and to carry out certain practices, since the State in this case requires only minimal information. It is possible to go further still, and defend the idea that the State must be opposed to communitarianism, in order to defend individual liberties against the dominant tendency of communities to consider themselves to be the only defence, the only defender, of truth and rights. If bureaucracy is defended for its universalism, it constitutes a powerful defence of personal rights against the thirst for power of the established authorities, certainly, but also of all powerful groups wishing to keep individuals and their rights under their control.

At this time, the greatest threat to States is not the multiplication of extreme social groups, but the closure and the unidimensionality of communities considering their own cultural identity to be the only acceptable one because it has religious foundations or is based on national social traditions. Today, there needs to be means to respond, not to popular uprisings, but rather to the weakening of social movements that ensure change and improvement of legislation, by democratic means.

All these observations tend towards the same conclusions. Instead of attempting to maintain or create States which create strong links within the country between economic power, military equipment, national conscience or cultural homogeneity, on the contrary, it is necessary to separate the various orders of collective life, and to give the State the role of national cohesion, certainly, but even more the role of maintaining the autonomy of each sector of social life, and especially protecting the rights of individuals who are not only citizens. The internal splitting of empire-States will not slow down. This is not to reduce the role of the State, but to require that it should resist totalitarianism or communitarianism to give citizens more capacity to defend their liberty and creativity.

The State is in the service, not of religion, but of cultural freedom: this is a daunting task, which reinforces the entire population's capacity to act, invent and hope, without falling into the abysses of communitarianism. This is the reason why, beyond apparent paradoxes, while the State intervenes more and more, and justifiably, in social and cultural life, it is important, to avoid the creation of new absolute powers, that this extension of State interventions should entail a definition that is as limited as possible of the obligations of citizens and the information they need to communicate to States.

Naturally, this does not mean that the importance of the national State for global and national benefit is limited, or should even be limited - to adopt a phrase coined by the Green party. It is the wrong argument, in reality, as national States have been the principal actors of globalisation, and are also the principal defenders, internationally, of local or regional demands. This brings us back to our starting point, and to the defence, constantly present in this presentation, of a State that is not a conqueror, but a protector, of the rights of everyone, particularly the vulnerable, and consequently is reinforced by self-imposed limits, while it is weakened by its pretention to direct society in the name of its superior interest.

The modesty of the role of civil status is a sign, among many others, of the more defensive than offensive orientation which should be the aim of a democratic State. The actors in society, and above all those suffering from domination, must win themselves new rights. The role of the State is to guarantee rights conquered by social movements and legislative decisions; rights that those who receive them are not always capable of protecting, or even convinced that they have to look after maintaining them themselves. In the 19th Century, it was necessary to extend the role of States against the bourgeoisie on the offensive. Today, on the contrary, it is necessary to protect creation and changes in ideas, projects and practices which incrementally reinforce the drive for liberty, choice, ideas and practices.

The extreme limitation of the information demanded by civil-status departments is one of the most concrete demands, made to protect and encourage the spirits of initiative and tolerance. Such complementarity between the claims of social actors and the limitation of the State to a protective role, reinforces democracy, while the pretension of the State towards identifying itself to every dimension of a society is a huge threat to democracy. We might then say that rights are best defended by the conjunction of forces, liberation and equality, and a State that defines itself before anything else as guarantor of each person's rights.

This brings us back to classic distinctions, for instance that of I. Berlin, between positive and negative freedoms (the latter describing the right to not..., that is to say to be protected against all powers); or the one that differentiates all instituting forces, which conquer rights, from instituted forces, which are in charge of defending the rights instituted by law.