

Peace and Constitutions: Wording the work for peace

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War should never be¹.

We work to see history, our history become the result of our choices, the outcome of our human progress. We also work to see democracy serve humanity as a whole, in dignity, for the well-being of all its members.

Modern history is the result of our choices and actions, but also derives from what is affirmed in written texts, the ones we read and the ones we write, the ones we live by. We have religious texts and a very large body of philosophical writings, but humanity has so far very few common fundamental texts: those expressing what we wish to achieve and how we mean to achieve it for our species and for ourselves. The Universal Declaration of Human Rights is one of them and somehow, locally, national constitutions do the same: they lay out for everyone, in a territory, the fundamental principles of society. They are locally universal.

Constitutions existed for a very long time. Their quality, the way they serve the people may vary from time to time; too often, they still behold too many inequalities. However, they are now a universal social and legal tool and this is rather new, every State now has one². This does lead to progress and change as suppleness and better democratic participation to the elaboration and to the approvals of these constitutions, by the people, tend to become more of a norm.

Because of this growing participation to constitution making, better than a rule imposed by the sovereign, constitutions become a factor regulating power and moreover a mediation tool between the people and their authorities.

Through participation and human rights, constitutions also lay down the aspirations and the rights of the people. They become a tool for more well-being and a more sustainable future.

The full revision of a constitution rarely happens and more rarely still, in times of peace. It is presently so in Geneva (2008-2012)³ and it is a good opportunity to express some truths, the ones we would like to see more frequently achieved in our daily reality, in our common life.

In search of peace, an attempt at economic and political philosophy.

The Enlightenment philosophers, or at least the more liberal⁴ among them, used to promote “the highest possible good for the greatest possible number (of people)”. The human rights dynamics

¹UNESCO specifies in the “Seville Manifest” (1989) that there is no scientific evidence to demonstrate that violence or war are unavoidable or an element of human nature, but to the contrary, a matter of choice.
<http://www.unesco.org/cpp/uk/declarations/seville.pdf>

²Only the United Kingdom does not have a Constitution, it is replaced by a significant set of laws. Andorra functioned according to a XIII century treaty until asked in 1993, by the Council of Europe, to adopt a Constitution.

³ Translation of this text was done in 2013.

⁴Particularly Locke and Bentham, but also partially Hobbes and Rousseau, the Social Contract philosophers

goes further as it states, “sufficient good granted to all”. This is improved paradigm – serving all, if not with all the good at least with all the necessary good – goes towards universality. It has consequences on the economy and on the environment. Satisfying the basic needs of everyone, everywhere on the planet, is to dare a just distribution of human wealth, sharing the assets, the wealth of humanity. It is evident that presently even in rich countries all basic needs still need to be covered for all, moreover in dignity. And it is only through because of a proper and humane use of this patrimony, ours as a species and ours individually, that it will be possible to use this large amount of resources in a sustainable and peaceful manner. Only care for the good of all will grant the survival of all. Any other solution, because of the inequalities and suffering it would entail or does impose even if without violent conflicts, terrorism or war can only be a source of ill-being and impede the construction of our future, of a happy future for all. Proper return on investment, it is because every member of the population – even the most disadvantaged ones – will feel reasonably happy on the planet that everyone will be sufficiently happy to respect our planet and to receive the means to respect the planet, the only planet sustaining human life we have so far.

So forth, a constitutional clause that moderates wealth in order to ensure the well-being of each and everyone belongs in any constitution that aspires to protect and value human dignity and the future of humanity. Furthermore, such clause is needed to overcome the economic and ideological debate which undermined all the 20th century and led to the Cold War. Moreover, proper share of the wealth of a nation, so everyone has enough of it, only requires the fulfillment and the respect of the economic and social rights we already subscribed to⁵, rights that do guarantee the basis of human life for everybody.

Peace in itself

A social and economic peace also needs peace at large.

Peace is an essential value. Yet so far it seems to be the forgotten child of the constitutional process. Poorly highlighted during the sustainable development⁶ theoretical elaboration, peace is too often in human rights texts relegated to “the right to personal security”⁷. Basic rights do protect the individual from arbitrary actions by the State and they make sure, or should make sure, that the State serves the population as a whole. What else can be more arbitrary or damaging for the population than war? Even the eventuality of a war and the costs involved in its military preparation, moreover the climate of violence it generates hampers the possibility to develop less conflict-oriented societies. So far, too few States gave up having a military institution altogether⁸ to foresee on short term a society where the right to life and the right to live free of fear are fully applied to everyone, where they are guaranteed by the total abolition of war. It is

⁵http://www.admin.ch/ch/f/rs/c0_103_1.html. Switzerland adhesion in 1992. The preamble of the Swiss constitution mentions almost the same: “(..) Knowing that only he who uses his freedom is free and that the strength of a community is measured by the well-being of its weakest member (...)”.

⁶The three pillars of sustainable development are ecological, social and economical development. These three pillars do however need peace in order to communicate with one another.

⁷Article 3 of the Universal Declaration and art. 5 of the European Convention on Human Rights. We can add art. 28 of the Universal Declaration of Human Rights which specifies that there must be an international order in which other rights can be fully realized, such an order can only be peaceful indeed.

⁸There are between 20 (close) to 30 countries without army. A number of them have taken this decision democratically. More details: C. Barbey “La non-militarisation et les pays sans armée”, APRED, 2001 or *idem* “Countries without Armies, Peace Policies and Non-militarization”, in preparation.

therefore necessary to create or to identify new peace instruments, which could nevertheless lead to the progress of peace.

Almost all our constitutions include dispositions, though often vague, which express our aspirations for peace. We can elaborate on them to be more precise.

Peace could be granted as a human right, i.e. “every human being has the inalienable right to live in peace”. Such a disposition would ensure a certain control of State behavior and State use of force. Respecting the individual’s right to peace would put the State on the right track. Control of State actions regarding peace can take different forms. Just as it is done for all other human rights, the State under review will be subject to regular reports to verify whether it effectively promotes peace and how peace progresses in its territory and realms of reach. A judicial control of the right to peace will allow for a more precise formulation of the content of the right and to quell any abuse of force. They are some other possibilities to be protected from violence; from violent propaganda and from fear. Violence prevention plans still often lack in public policy, they could be provided for in the constitution. To have the right to conscientious objection; the right not to have one’s work or inventions used for military purposes and the right to receive an education that emphasizes peace are also essential elements of peace policies. To have the right to see that peace research is sustained and the right to see that conflicts are transformed without using more violence is also important. The right to verify, case by case, whether the use of force was justified or not and moreover to control if all necessary preventive measures were duly applied before using force would also help the progress of peace and the respect of the right of each and every one not to be submitted to excessive use of force.

Slightly different from what is done now: the right to peace should be implemented by peaceful means rather than by win-lose procedures. Mediation and other so-called soft justice methods are, rightly, evermore emphasized. They favor whenever possible a no-loser justice where everybody is a winner and therefore takes more easily experience from what happened. Quite often these type of justice can be restorative, they then add no further damages to the situation than proper reparation, leaving aside retaliation for the sake of prevention, lessons learned and social cohesion.

So the State must see to it that through its actions it becomes indeed a promoter of peace, just as it would apply similar objectives in other areas of State activity,⁹ like protecting the environment or promoting gender equality.

The new constitution of the Canton of Vaud, is a good example of this when it states: “Through all its activities, the State shall see to it that justice and peace prevail. It upholds conflict prevention¹⁰ (...)”.

So forth, “peace and conflict impact studies” should be used much more. Subsequently, the State will have to re-evaluate a number of its practices, including the traditional ones, those practices by which it aims at ensuring public order and justice, practices by which it actually and too often, gives away a picture of brutality and violence. In other words, the State shall be an example of peace and understanding, an example of dignity and humanity, an example of peace.

⁹Gender equality, environmental protection, etc.

¹⁰Art. 6, paragraph 2c.

In conclusion, I would stress that the constitutional process is a unique occasion to promote the progress of humanity and to improve the condition of its members, even locally. However, this kind of progress makes sense whether it is included or not in legal texts.

Nevertheless, a visionary and at the same time a realistic constitution maker should take this progress in consideration and anticipate it to include the progress of peace and of the well-being of all, as well as the sustainability of our species, in any constitutional text.