

THE FAMILY, LAW, RELIGION AND SOCIETY IN THE EUROPEAN UNION AND MALTA

Edited by
PETER G. XUEREB
(Project Co-ordinator)

**CIVIL SOCIETY PROJECT
REPORT
2006**

**THE EUROPEAN DOCUMENTATION AND RESEARCH CENTRE
JEAN MONNET EUROPEAN CENTRE OF EXCELLENCE
UNIVERSITY OF MALTA**

With the support of the European Commission
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ISBN: 99909-67-40-7 Paperback
ISBN: 99909-67-41-5 Hard Cover

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University of Malta and Peter G. Xuereb, 2006.

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Acknowledgement

This project has been carried out with the support of the European Commission.

The content of this project does not necessarily reflect the position of the European Community, nor does it involve any responsibility on the part of the European Community.

*Typeset by the European Documentation and Research Centre.
Printed by Dormax Press.*

FOREWORD

I am pleased to introduce this Report on the theme of The Family in Europe and in Malta. It is the second report produced by the Civil Society Project, a multi-disciplinary project coordinated by the European Documentation and Research Centre as a Jean Monnet European Centre of Excellence. The focus of the Project is on Malta's experience as a Member State, and the situating of the Maltese perspective within the Europe-wide debates on major issues relating to the current and future European Union and its relations with its Member States and with its Neighbours. This includes as a main component the response and experience of civil society in this context, within the wider European and indeed universal debates.

The list of contributors indicates the names of the authors of each of the several contributions. Of course, my thanks are due in a special way to them, for making available their time and expertise, gratis and most generously. However, I emphasise the role played by group work, and the value of meetings in which several other experts and players in the fields covered by the project participated. Therefore, a fuller list of participants is included to indicate this other more general input from which the Project has benefited. Also, many of the participants could only take part with the support of their organizations, public and private, and this must also be recorded.

Every effort has been made to give an accurate picture of the theoretical and practical landscape on the complex issues raised by the challenge of constructing a citizenship that goes beyond the traditional loyalty to the state to embrace concepts of loyalty to the Union and to the wider international order, and to do so as comprehensively and holistically as possible. The Family is central to the development and fulfillment of each and every citizen. Loyalty to the Union will necessarily be a function also of the way - positive or negative - in which the Union, its methods and its policies impact on the family. Yet, and this cannot be forgotten in a secular framework, values are rooted in religion for millions of European citizens, and the case-example of 'family values and the Union and its policies' is an apposite one in the present climate from which to consider the wider issues of the role of religion in the European public sphere, democracy and human rights in Europe, the urgent need for inter-cultural dialogue about values, and the promise that this dialogue holds for greater cohesion and solidarity in our societies - or better, the European Society presaged by the Constitutional Treaty. Standing as we are between the Year of Equal Opportunities (the subject of last year's Report) and the Year of Intercultural Dialogue envisaged for 2008, this Report continues on the themes of Inclusive and Plural Citizenship and Civil Society in the context of the evolving *Acquis Communautaire*, as set out more fully in the Introduction to the first Report.

The Project is part-funded by the European Commission for the first three years of its five-year duration. This means that the EDRC must needs raise the balance of the funds from public interest-minded public and private sources, and will be entirely dependent for the last two years of the Project on these sources. I am very grateful for the additional support received.

This Report will form the basis for public discussion and debate in a National Conference organized by the EDRC and to be held on September 19th of this year. The Conference is aimed at civil society in general. An international cast of speakers will address a Maltese audience on trends in other Member States and in the development of the Union and its policies as they impact on the family and its members, and workshops will carry forward the debate. It will provide an opportunity to reach conclusions and make recommendations against that picture and the findings of this Report itself.

My thanks then once again to the University of Malta, to our sponsors, and to the European Commission, to the expert authors of the various reports, to all participants in the research work and to all future participants in the Project - including the attendees at the National Conference in September, for these too will, through their participation, become part of the ongoing Project. Of course, my thanks to the EDRC staff, and especially Ms. Doris Mangion and Ms. Joanne Muscat, whose unstinting efforts underlie all results of each EDRC project.

PETER G. XUEREB
UNIVERSITY OF MALTA
MSIDA, MALTA
JUNE 2006

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INTRODUCTION

THE FAMILY, LAW, RELIGION AND SOCIETY IN MALTA AND THE EUROPEAN UNION: AN OVERVIEW

PETER G. XUEREB

Part A. The Family, Law, Religion and Society in the European Union: An Introduction.

There is no family Policy as such at EU level. The reason is simple. The Member States have never transferred to the EU level the competence to forge a Common Family Policy. Secular legislative competence remains at national level. However, tension can arise at the European legislative level because the EU does have competence in a number of areas that impinge on the citizen in his personal and family life, not least through the exercise of EU competence in social matters, and therefore matters of working life, including in the context of the exercise by the citizen of his or her freedom of movement around Europe. Policy and legislation in social matters, in the area of free movement and in the area of the establishment of an area of freedom, security and justice, then, can impinge upon and affect, whether positively or negatively, the family life of the citizen and the lives of his family both in his own Member State and when he or she moves to another Member State.

Similarly, family issues arise in the context of pluralism within the EU, and the questions of multi-culturalism and religious pluralism, and the freedom to believe or not, raise the broader issue of the role of religion in the European public sphere - issues of real and increasing salience in all Member states, including Malta.

Thirdly, the EU has relations with third states, such as the Mediterranean states not members of the EU, and asks of these, via its agreements with them, not only economic undertakings and obligations, but undertakings as to democracy and human rights. This leads to the requirement that these states adopt the *acquis communautaire* in such areas as women's rights, especially to and in employment (with freedom from discrimination) with the impetus coming from the human rights angle, as also from the development policy angle (i.e. the idea being to involve women in education and training and productive work in order to address the question of poverty and economic underperformance, thus also easing the migratory pressures that otherwise inevitably build up).

Fourthly, there are those in Europe who see the Union as having the potential to advance their respective causes. On the one hand, there are those who would wish to use the current Treaty provisions and possibly future Treaty provision to advance women's rights. Sometimes this can be achieved under current Treaty competence such as through measures, actual and proposed, intended to achieve a better work/family balance, but sometimes also with a view to applying a common approach to the interpretation of what are seen as 'rights' but in truth reflect values (some might say a lack of them) such as in the case of the alleged right of a mother over her person meaning also a 'right' to abortion. They would argue that religion has no place in a secular EU, bearing in mind that the major religions are "pro-life". At the other end, are others, including those who, seeing this trend, argued for a direct reference to Christianity in the Constitutional Treaty. These would be motivated by a desire to see Christianity-specific values or a certain balance of rights set out or set down for the whole of Europe. This was resisted. One response to the failure of this attempt to 'Christianise' the EU Constitution is to then focus on the national, actually going along with the down-playing of religious values at supranational level - and this may also have influenced those who here in Malta call for the entrenchment of the criminal provisions on abortion in the Constitution - if only to ensure that the full force of state law could be mobilized against any attempt to circumscribe the national margin of discretion for setting the "balance of rights" in their respective jurisdiction.

For the Union then the dilemma is the following. On the one hand, it seeks to provide an area of freedom (especially of movement), security and justice for its citizens, allowing free movement and allowing the movers to move 'as they are' with their own beliefs or personal value systems (many would say 'life-styles), without being subjected to arbitrary discrimination at the very least, as well as to support scientific and social and economic development. At the same time, it has to respect the culture, traditions and values of each 'people' of Europe, and of each minority, and the laws and traditions of each society as regards and reflected in 'public policy' and essential constitutional guarantees. It is clear that the difficulty arises because there is no agreement on several issues of a religious, moral or ethical nature as reflected in different conceptions then of the content or the balance or hierarchy of 'rights' and 'public policy'.

The European Union has not often faced such matters head on. Nor has it had much opportunity, without the competence to devise a Common Family Policy. But as I said above, the Union has competence in various fields, a competence that can be used to enact measures that do have an impact on the family and therefore that do raise issues of family values. As such values are rooted in religion for millions of European families, the relevance of religion simply cannot be denied.

The Lisbon strategy has an essentially economic aim, that of creating a Knowledge Society, capable of competing as an economic block on the world stage, by the year 2010. This translates into targets such as those relating to the number of women in employment, with flanking proposals regarding flexible working - for women and men - for example through tele-working, job-sharing, parental leave, childcare, and so on. One does not need to cite a Family Policy competence for such measures, as the Treaties themselves require 'equality between men and women' and the argument for measures that enable women to balance work and family can be posited and have in the past been posited at EU level on the

principle of equality. Equality of men and women is set out indeed as a 'Value' of the European Union in the Constitutional Treaty (Article 1-3) and one effect of treating it as a value in this way is that it features as an 'objective' and posits a rule for interpretation of all legislation and other action of the European Institutions. Another effect is that it will feature as an objective of the Union in its relations with third countries, for Article 1-1 says that the Union shall promote peace, its values, and the well-being of its peoples and Article 1-3 lists as one of the objectives of the Union that the Union should, in its relations with the wider world, uphold and promote its values. Of course, it is universally accepted in Europe that there should be equal treatment of men and women. However, stating matters from a purely economic or women's rights perspective does not cover the whole range of issues for millions of families in Europe who seek to be guided also by their family rights and obligations as defined for them by their respective religious or other affiliations. Where a Member State's people are largely homogenous, then the issue becomes a 'national' issue, with the possibility of particular legal argument being raised. But even where the holders of such beliefs, let us say, are in a minority in any Member State or in the Union as a whole the same issue in principle arises as to such beliefs and the respect for them at policy-making level, though here the basis of the argument may be different.

There are contexts in which it is argued that the EU cannot avoid taking a stance on certain sensitive ethical issues forever. For example in the context of free movement, there is always the pressure from many quarters to argue that freedom of movement cannot be said to exist if one cannot be accompanied by one's same-sex partner, or by one's family as defined according to one's law of origin. Others would argue that Union law gives EU citizens the right to move freely in order to 'receive' or to provide an 'abortion service'. Several of these issues are referred to in the papers in this volume. Strong views in this regard will be expressed by some of the papers, and one major point of this report is to explain the strong views held by certain NGOs and even possibly the general population in Malta. They should be taken as first and foremost inspired by a wish to see "Maltese Catholic values" preserved *for Maltese society*. Of course, those who believe that they are the right values, and that we have an obligation to witness to them and propagate them, also ask how we might do this at European level as well as in all international fora, but most of us accept that this will happen in a secular context.

My principal aim in this part of the paper is to set the background to the rest of the Report and to argue the case that religion must be allowed full play in a multi-cultural context within the bounds of a general Western secularity. I start by highlighting what I would argue is the consensus implicit in the relevant provisions in the Constitutional Treaty. I then refer to an initiative of COMECE¹ to put forward a Family Strategy to balance the Lisbon Strategy from the perspective of family values as inspired by family values drawn from the Catholic religion. I then move on to argue that a major service can be rendered the entire European Union both in its 'internal' policy-making and in its 'external' policy-making, by the exercise of full inter-religious dialogue at all levels, at Church/Religious Authority level and just as importantly at 'lay' civil society level. Such input into decision-making would of course flow in side by side with that of human rights groups, women's groups, gay rights

¹ Commission of Bishops' Conferences of the European Community.

groups and of all other citizens and groups. But this Report argues the imperative importance of more effective inter-religious dialogue, as the way to more effective moral or ethical input, and a most fruitful and result-oriented and a practical ‘living together’ approach to policy-making that can lead to better law-making and improved input and output legitimacy for the *acquis* in the making.

Part II of the Constitutional Treaty²

Article II-70 would provide that everyone has the right to freedom of thought, conscience and religion, including to manifest religion or belief in public or in private, in worship, teaching, practice and observance.

This right is already recognized by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, by the Charter of Fundamental Rights of the European Union, and by national Constitutions, and all Member States are bound to the observance of these rights, but it is clear that there can be disagreement in Europe about the interpretation of the freedoms and the circumstances leading to legitimate restrictions on the exercise of these freedoms. Decisions on the latter point can be taken at national level. At the same time, Member States do not seem to be doing a very good job of managing the social ramifications brought about by the presence in each of their societies of persons of different religion or value system. This raises the issue whether the EU, its Court, its other institutions, can see themselves as having authority to direct all Member States down one route or another in the pursuit of tolerance, respect and the exercise of human rights. I would argue that the European Union, as responsible for security and justice in and around Europe, must have a role in identifying and advancing best (in the real sense of that which is ‘most good’) practice.

Article II-74 recognises the right, again to be found in the European Convention and the law of each Member State, of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical conviction, but adds the rider “in accordance with the national laws governing the exercise of such right”. Here the Member States have held back. They refer the issue to national law. But is this how it should be left? Debate (and dispute) will go on until a proper and just balance is found within each Member State. If the EU has no magic formula, and the European Convention does not offer one, each Member State has to find it for itself. But best practice in each Member States can be studied and the experiences analysed. To fail to engage in European-level debate on this is to risk internal disquiet of a serious nature for society and individual freedom. There is equally the risk that the EU will be seen as unhelpful in the matter while at the same time having the burden of representing and explaining “European values” to a sceptical outside world. No matter is of more essential concern to a (religious) family than the freedom to practice one’s ‘family religion’ without being made to feel not only that one’s citizenship or identity as a national of the state one inhabits, but also that one’s European citizenship, is in question. This is why both secularity and respect for religion must go hand in hand in forging loyalty to state and to Union.

² Treaty Establishing a Constitution for Europe, signed on the 29th October 2004, not yet ratified.

Article II-81 then spells out the general anti-discrimination provision: Any discrimination based on any ground, such as...race, colour, religion or belief.....membership of a national minority...shall be prohibited.

Article II-82 would then provide that the Union shall respect cultural, religious, and linguistic diversity.

So the Union, and its Institutions, and all Member States even when implementing Union law are bound to respect religious diversity and to allow freedom of religion and of conscience. Clearly, the first imperative is that the Union and its Institutions listen to the ethical input of all the major religions, and of the practitioners of those religions, with a view at the least to ensuring that policy and legislative decision truly ‘respect’ those ethical imperatives and values, but with the equally important objective of arriving at policy and legislative solutions to concrete problems that will, having accommodated religious diversity, and sought ethical soundness and therefore justice, attract greater claims to legitimacy and loyalty.

I now refer to a COMECE initiative to illustrate how one religion has sought to input its family values into EU policy-making. COMECE has not sought to Catholicise the rest of European citizenry. No religious conversion process is attempted. It has sought to promote the value of the family in the context of the Lisbon Strategy in the interests of all families, and all European societies.

COMECE and the Constitutional Treaty

A COMECE document titled ‘The Treaty establishing a Constitution for Europe - Elements for an Evaluation’ and dated 15th February 2005³ refers to the input of the Commission of Bishops’ Conferences of the European Community (COMECE) into the drafting of the Constitutional Treaty.

Part III of this document refers to the values provisions in the Treaty. Article 1-2 is cited as embodying a new list of Values of the Union, namely respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Elsewhere the Treaty talks of the ‘rights of the child’ (‘objectives’, Article 1-3) but with no definition of ‘child’. It is also noted that for the first time this Treaty article would enshrine a description of the essential characteristics of a European “society”. Apparently this is an attempt to define the “European Society”. The second sentence of Article 1-2 says that “These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men prevail”. The stated premise is that these are shared values - values commonly understood and shared and applied, hence common in each single society in each Member State and common to all and the basis of a European Society.

But of course, as I have indicated above, the reality is that the various societies in the various Member States may resolve ‘conflicts of rights’ on the basis of different values or different prioritization of rights.

³ See COMECE website at www.comece.org

Debate in the institutions about these differences, even in the context of specific legislation, is unavoidable. Does the right of free movement under the Treaty mean also the right to travel from a non-abortion state to an abortion state for the purpose of securing an abortion? One approach is to say that the Treaty freedom is subject to state law on this. Another would be to say that that state law is adequately served by permitting it to hold its view, but that the right to freedom of movement for such a purpose does not impinge on that law or on public policy or morality in the first state. The counter-argument to this is that the EU system, were it to take this line, would be undermining the proper sphere of the first state. The abortion-seeker would claim a right under Treaty law. The European Court would have to decide whether it could decide such a case in favour of free movement irrespective of the public policy or public morality of the first state by interpreting the Treaty as either being outside the moral sphere or as being on the freedom of conscience side of a conflict of rights or values. Alternatively, it would continue to keep out of the exercise of authority by the state concerned. This report does not engage directly with this question, which remains open to further discussion.

The Treaty would refer to ‘the religious inheritance of Europe’ as a source of inspiration for the entire Treaty, but would this be interpreted such as to resolve such issues in line with the tenets of the major religious traditions of Europe? The status of the churches, religious associations or communities in the Member States under national law is expressly to be respected by the Union, as also is (“equally”) that of philosophical and non-confessional organizations, as the COMECE document points out. Article 1-52 recognises their identity and specific contribution, so that the Union “shall maintain an open and transparent and regular dialogue with these Churches and organizations”. Here then, for the first time, there would be in the corpus of the text an express provision for “religious input” into EU policy-making. Surely this is to be welcomed from the perspective of ethical input, and a multi-cultural and pluralist perspective, ensuring a “secularity with values”. The COMECE document regards this as an advance on the current situation under the Treaties. And COMECE interpreted the Treaty as implicitly accepting the “predominant contribution made by Christianity to today’s Europe” arguing that as a matter of historical fact it is Christianity and the Christian message that have built the “inheritance of Europe” from which have developed the “universal values of the inviolable rights of the human person, democracy, equality and the rule of law. It regards the Treaty then as taking an important step in defining the European identity (‘European society’, as I said above) and in expressly attributing an appropriate place to religion⁴. And as for the future, the COMECE document says that the future is to draw on this “religious inheritance..with Christian values such as solidarity , justice and peace”, but of course such ‘abstractions’ do not necessarily offer a

⁴ Ibid. p.14. See Rowan Williams, Archbishop of Canterbury, on the place of religion in the public sphere in Europe. The reader is referred to the speeches of Rowan Williams, available on: www.archbishopofcanterbury.org/sermons_speeches, and especially: “ Forum Debate: Is Europe at its End?” (12th September 2005); David Nicholls Memorial Lecture: “Law, Power and Peace: Christian Perspectives on Sovereignty” (29th September 2005); “Religion, Culture, Diversity and Tolerance-Shaping the New Europe” (7th November 2005). See also Alan Woodrow and Philip Crispin’s pieces in *The Tablet*, 10th December 2005. See also, Alessandro Ferrarini, “Religions, Secularity and Democracy in Europe: for a new Kelsenian Pact”, Jean Monnet Working Paper No.3/05, www.jeanmonnetprogram.org/papers/05/050301.html For a contribution that for me retains its relevance for Malta in 2006, albeit addressing the challenges facing the Catholic Church in Britain and Ireland in the 1980s, see Jack Dominian, “Marriage and the Family”, in Cumming and Burns (eds.), *The Church Now* (Gill and Macmillan,1980), pp.121-133.

guide of themselves to the resolution of difficult ethical issues in concrete cases. Reflection, thought, study and dialogue are always needed if we are to produce real guides for action.

Indeed, as the COMECE document put it⁵: “The Constitutional Treaty perceives two aspects of the human being: individuality and solidarity. Hence the Treaty...corresponds to a Christian image of the human being. In general statements and particular provisions however, individuality and solidarity seem to be disconnected. The Treaty does not link the two sides of human life - personal freedom and social community - which are core elements of the theological understanding of the human being as a person.” In order to foster such a link⁶ it will be important, the document says, to precisely monitor the development and application of the Constitutional Treaty and to promote European Policies which are based on the Constitutional Treaty and correspond to Christian anthropology. This applies to all policy areas in which the Constitutional treaty provides for procedure, such as economic and social policy, migration and asylum policy and even security and foreign policy.”

COMECE in the European Public Sphere: Towards a Family “Strategy”

COMECE have therefore advanced a Family Strategy⁷, which it proposed to the Union to ‘balance’ the largely ‘economic’ Lisbon Strategy. Not a ‘Policy’ then, but a ‘Strategy’, proposed in the spirit of the above reading of the Constitutional Treaty, which, though not ratified and perhaps never to be ratified in its current form, in the COMECE view stated the premises on which even the current Union is founded, for it was meant to be very much declaratory of the current Union as it is found, as it has evolved on its ‘path of civilisation’.

The COMECE document, titled “A Family Strategy for the European Union” is subtitled “An encouragement to make the family an EU priority”. It is a proposal document produced by the COMECE secretariat and it usefully details much of what I said in my introduction about the lack of a competence for a family policy, but it also shows that the EU has an impact on the family, especially by defining the rights of its various members.

It was proposed as a ‘counter-balance’ to the Union’s Lisbon Strategy, which is stated as containing a series of social and environmental goals but which “does not really address social relationships” and in which there is mention of human and social capital but no significant mention of the family. Yet according to Eurobarometer, most Europeans say that family life is what they value most in their lives. The thrust of the document is that family life has become weak and needs to be supported⁸. EU policies should focus, in a horizontal way, on promoting more stable families and family situations that permit couples to have their desired number of children⁹ and more generally on making the EU the most family-friendly region of the world by 2010.

⁵ Cit. p.18.

⁶ See also, on the individual in a community setting, see Leonce Bekmans, “Globalisation and Solidarity: Europe’s Duty in Intercultural Dialogue”, in *Intercultural Dialogue*, proceedings of a conference held in Brussels on the 20th and 21st March 2002 (European Commission, DG Education and Culture, Office for Official Publications, Luxembourg), p.152-168, especially pp.159 and 164 on the ethical dimension.

⁷ See www.comece.org. document: A Family Strategy for the European Union - An Encouragement to make the Family an EU Priority.

⁸ Cit. p.5.

⁹ Cit. p.4.

The COMECE document sets out some of the headline goals, some or many of which are perfectly achievable under current competence:

- To establish in all Member States a right to temporary part-time employment for citizens wishing to take care of their parents (savings in institutional care would pay for this)
- the promotion of fairer children-friendly policies and regulations, e.g. regarding the management of social housing, reviewing the European directive on parental leave, the provision of child-care in the Mediterranean region to the level set by the Barcelona European Council, while not seeing child-care as the panacea whether in the EU or in the Mediterranean region.
- Promoting fairer regulations and policies on marriage and parenting, including reviewing national best practice to encourage marriage as the starting point for each family; promoting measures to prevent divorce (such as training, financing of marriage counselors), halting disintegration of families, and furthering re-unification of families that are separated by the EU's external borders, and developing national plans for the better implementation of rules on the reconciliation of professional and family life (addressing gender discrimination, the gender pay gap, and other ills); the promotion of awareness of the equal value of family activities and employment and the equal responsibilities of father and mother¹⁰ for raising the family and equal burden-sharing, and stressing the social responsibility of companies¹¹
- Promoting links between generations
- Promoting public support for families in particular need, and the dignity of all children and human beings whatever their abilities, simplifying the bureaucracy associated with adoption, the giving of more attention to situations of family suffering (families living in poverty, families where there is abuse and ill-treatment, and more)
- Promoting family associations and a better representation of families in public life.

Conclusion to Part A.

I have sought to focus awareness on some key issues, pointing out that although the Constitutional treaty has not been ratified, it has served to better articulate the place of religion in the Union, recognizing it as a source of inspiration for the values of the Union and of European society. Even if the Constitutional Treaty is not ratified, the results of the high-level deliberations cannot be ignored, and the principles set out in terms of the place of religion in the Union reflect in my view the essential position in the Western tradition.

The reference to Christianity and Christian values is, of course, clear. However, our tradition, as the Archbishop of Canterbury Rowan Williams has emphasized, is secular, with separation of Church and State, but with an acknowledgement of the importance of religion in the lives of millions of citizens and therefore of the role of churches and confessions in the public sphere.

¹⁰ Indeed, a proposal for a European Parliament Resolution was made by the Committee on Women's Rights and Gender Equality to this effect as part of the Lisbon Strategy debate. Draft Report on the future of the Lisbon Strategy from the point of view of the gender perspective 19.9.2005, PE\ 580815EN.doc.

¹¹ Cit. p.10.

Also, it is clear that as part of this tradition freedom of religion must be a reality in all Member States. Respect must be learned and put into daily practice. This practical reality can only come from mutual understanding and openness to ‘the other’ in a spirit of love and humility. We all must inform ourselves better as to what unites us rather than separates us.

The family is a meeting point in all societies - European and non-European - of the religious and the secular. There is a lot of work to be done by all who hold the family dear, and who see it as a unifying force, to ensure that in all the policies that impact upon the family - employment, education, health, the fight against poverty and exclusion, migration and immigration, equality policies - the moral and even religious dimension is at the forefront, for even if the Union is restricted to taking only supportive and complementary action to national action as far as family policy is concerned, it can influence the family for better or worse in the Member States and Neighbouring States through the stronger competences that it does have in the other areas mentioned above. Indeed, it is the reality that any measures adopted at EU level in such areas of competence will only be seen as legitimate in the eyes of millions of citizens in Europe and millions of people in our Neighbours, if they clearly take into account the moral dimension. Each Member State and society should consider what is best practice in the others, and must seriously examine its national rules and practices against the yardstick of human and fundamental rights. We in Malta too must consider how we treat our families of whatever denomination including non-Maltese families that come to live among us and to whom due consideration is due under Christian precept and international law. We must also consider how what we perceive as threats to the family and the rights of the mother, father and child can be protected through our own position in the European Union as members with the capacity to influence others in the Union both as to the development of internal Union policies and the external policy of the Union especially *vis a vis* our neighbours in the Mediterranean.

The example I have given of the COMECE initiative shows how the Catholic Church perceives the provisions in the Constitutional Treaty, and how it has sought to influence EU policy and law-making with a view to safeguarding Catholic family values. Efforts on the part of the various religions to work together on such issues, with real dialogue at Church/Religious Authority level, and also on the part of civil society as a whole, can lead to better mutual understanding and a wider front for the protection of religious values and ethics, as also for the full play of such values in policy-making, and therefore the enhanced legitimacy and effectiveness of such policies.

Part B. The Other Papers in this Volume.

The aim of this Project was to bring together leading academics and representatives of civil society to research and discuss the Family-related *acquis communautaire*, and then the role of religion in the public sphere, taking Family Policy as a case-example. This was done in the full knowledge that the EU has no specific competence in the area of family policy, but also of the recognition in the Constitutional Treaty of the importance of values, and hence of religions in a secular pluralist Europe. The idea was to initiate a fruitful debate in predominantly Catholic Malta about such issues, to heighten awareness about the place of religion in the European Union, to indicate what leading (mainly, but not all, Catholic) academics in Malta think, and at the same time to explain the approaches taken in practice

by some leading NGOs in Malta, while noting changes in Maltese society due to the impact of certain societal trends over the last three decades and the multi-culturalisation of Maltese society as it takes its place in a world of ever-increasing mobility of persons and as a Member State of the European Union. The purpose is to present the current state of EU law and policy, and the wider European legal dimension, as well as the current realities and debates in and about Maltese society, and to site the Maltese perspective within the wider European perspective. A major aim is that of dispelling myths, untruths and false impressions and to clarify for the ordinary citizen the context in which it is possible to preserve and live one's values while constructing an inclusive society under the rule of law.

Religion and The Family - A Maltese Account in the Wider Context

Father **Paul Pace** situates the Maltese reality into the philosophical, political and social debate as to the role of religion in the public sphere. "Is tolerance enough?" he asks. Our present predicament, he writes, seems to call for a more daring and engaged approach to public life, one that is willing to go beyond tolerant individualism to identify and achieve the common good of all.¹² No wonder that the phrase "common good" is being heard more often in the public debate. At the same time, a religion-based position claiming an important place in the public debate must be able and willing to accept challenge and criticism. The call is for attitudes that go beyond mere tolerance towards a more serious engagement for the common good and deep mutual respect. The Constitutional Treaty, in calling for a structured dialogue between the Union institutions and the Churches and other religious communities and associations would acknowledge the public role of such bodies in the democratic and social development of Europe and its Member States. In the end, attitudes seeking dialogue with those of other views must prevail over "megaphone diplomacy".

Father **Joseph Ellul** argues that while personalized forms of religion and made-to-measure spiritualities have become popular in secular Western societies it is also true that some forms of mainstream religion with their doctrines and precepts are making a dramatic comeback, especially among the young. Paul Pace had referred to both these phenomena as present equally in Maltese society. Now Father Ellul argues that religion is having a renewed influence on societal issues. A secular pluralist society poses uncomfortable questions to religion, but it must also now be prepared to face uncomfortable answers, for religion is concerned with telling people what they need to know rather than what they want to hear. Modern democratic societies face the challenge of cultural and religious diversity. Yet the modern democratic nation is based on the concept that there is a public domain in which a multiplicity of communities with different traditions can join in the collective enterprise of citizenship. This is not merely democracy. It is plural democracy. While European legislators who uphold the doctrine of secularism take as their point of departure the notion that European societies are still 'post-Christian', their same societies have now moved from a post-Christian condition to a multi-religious one. The notion that "the secularization of politics is the only way to build a tolerant world" is gradually becoming a myth. He argues, therefore, for the model of "enriched identity", that takes as its point of departure the recognition of the cultural and anthropological datum that the host society has developed, the basic identity, but that can and should develop in such a way as to integrate those elements of foreign cultures that can help it grow, develop and mature. He cites Chief

¹² See again, Leonce Bekemans, cit n. 5 supra.

Rabbi Jonathan Sacks, who argues that “we each have to be bilingual”. So that we first have to learn the first and public language of citizenship and then we have to learn “second languages” that enable us to dialogue in search of the common good. This learning must, vitally, happen in our schools, in our classrooms, for if we uphold Aristotle’s definition of education as induction into society, then religious -one’s own and that of others - education is the best form of induction into a multi-religious society. He argues for a true community of communities.

Father **George Grima** presents a Catholic perspective of the family and of family rights. He explains that present-day cultural diversity and religious pluralism mean that no one particular voice can be privileged, and that this is why the Catholic Church is finding the language of human rights to be an apposite instrument through which it is able to articulate its social ministry in the public domain. It is through the human rights discourse that a religious institution can be assured a hearing outside its own particular community and tradition. The right of the self to recognition by ‘the other’ in the context of both interpersonal relationships and relationships in the broader society is basic in any system of human rights. The Catholic Church, like other Christian churches, reads and interprets the modern history of human rights in the perspective of a relational view of the self. It is essential to affirm ourselves as being both distinct from and related to each other. The exercise of human rights requires the cultivation and maintenance of social structures of living that are conducive to the development of each and every person, and the mediating role of these structures is precisely one of the central points made by the Church in its interpretation of the significance of the family. Father Grima then explains the approach of the Church’s Charter of Family Rights, set out in the context of the major Papal document, *Familiaris Consortio*, to such ‘practical’ issues as work/life balance, domestic violence, child abuse, abortion and care for the elderly. He argues that situating ‘religious human rights documents’ in a fitting secular framework is precisely the kind of mediation or bridging that religious institutions should try to do in their role as occupying a meaningful position in the public domain. This is why the promotion by the Catholic Church of family rights, taken as the rights of the family as such as well as those of each member within it, is addressed also to law-makers. He proceeds to explain the respective roles of state, society and civil society, and of ‘religious institutions’ and the family within those. Through it all, he calls for solidarity, and specifically for ‘intellectual solidarity’ where openness to each other’s views and convictions should strengthen rather than weaken our self-identity. As to the COMECE initiative, “A Family Strategy for the European Union”, cited above, Professor Grima comments that it is an initiative that needs further and broader support to become an urgent matter on the public agenda, giving the family the priority it deserves.

Father **Fabio Attard** is a scholar who has worked to co-ordinate the various Catholic church efforts in Malta as directed towards formation of the laity. He writes here on the theme of the family in the Judeo-Christian tradition, placing the institution of marriage within this particular religious tradition. Readers unfamiliar with these religions may be surprised at the way in which marriage is directly associated with man and woman’s relationship with their God, and with His relationship with his followers in the collective, and then the way in which values, and family values in particular, are thereby inspired. It all serves to explain to ‘others’ the spiritual element in marriage as perceived by adherents to these faiths, that is to say how the moral/ethical dimension of the family experience is at the core of the family as

it is encountered in the Old and the New Testament. The paper serves to emphasise the depth of feeling of millions of adherents to their religiously-inspired view of family and family obligations, and their deep-seated conviction regarding the indissolubility of marriage and the sanctity of the life of the unborn child.

Together, the above four papers indicate how the family comes to be perceived as it is in predominantly Catholic Malta, and the challenges to thought and action that do arise as a result of the inevitable tensions in an island state that must be open to the rest of the World and which must itself come to the practice of multi-culturalism. However, they also demonstrate an openness among leading exponents of Catholic thought to the value of ‘the other’. It is in this context that we site the trenchant call by **Mario Abdurrahman Farrugia-Borg**, the Islamic community representative, to more than mere tolerance, but to true dialogue rooted in a sincere desire to adopt the model of “enriched identity”, as it was put by Father Joseph Ellul in his paper. Let us hope that this will presage concrete dialogue on specifics, including the family and family rights, at a heightened level in the future. In his paper, Mr. Abdulrahman Farrugia-Borg sets out the Muslim view of the multi-cultural society, and points to the need in Europe and all Member States, including Malta, for the launch of a concerted effort by public leaders, religious scholars, academics and civil society to highlight the common message of universal brotherhood, friendship and harmony, which are the main themes of all religions, and the need to ‘work unitedly towards a prosperous, stable and harmonious international community’. In the main, he writes, there is no conflict as regards religion and a secular state.

European Law and The Family

The next group of papers sets out the position under European Union law, including by reference to the European Convention for the Protection of Human rights and Fundamental Freedoms (as interpreted by the European Court of Human Rights in Strasbourg), on which the European Court of Justice in Luxembourg will draw for inspiration. Since one main theme of the Project is to identify the possibilities of value-input into the legislative process, one aspect is the inherent values, explicit or implicit in that legislation. It can be expected of EU law that it be relatively ‘value thin’, as it must reflect needs in the light of a common good that spans pluralist societies and states. However, these papers show that values do inhere in the legislation, starting from the predicates of human rights, and also that religious, moral and ethical values operate as a check on outright liberalism at EU level through this ‘thinness’, leaving room for a ‘thicker’ values approach at Member State level.

This European approach is reflected in the European Convention on Human Rights, as **Danièle Cop** shows in her paper. After analyzing the most recent case-law of the European Court of Human Rights, Danièle Cop turns to the *acquis communautaire* to show how the family is treated in the *acquis* in various spheres. Although the approach of the author is clearly on the liberal side of the spectrum, the paper shows how the European Convention, the Charter of Fundamental Rights and the judicial systems that support human rights in Europe (the European Court of Human rights and the European Court of Justice), as well as much of the secondary legislation that has been adopted in the sphere of free movement and immigration (third country nationals lawfully residing in the EU), evince respect for the principles and values of the various societies and communities in the States forming the

European polity. Of course, secondary legislation will be interpreted in accordance with its purpose, and the European Court of Justice has shown a propensity for justice in this regard. The paper then examines the efforts to support a proper work/life balance for Europe's working population within the context of the Lisbon Strategy, and some later papers in this volume develop this issue. It concludes with some musing about trends in Europe and with a hypothesis as to how a single "European" definition of 'family' might look if it were to try to embrace all forms of atypical 'families' that have been talked about; it is not clear why such a monolithic or single definition (rather than different apposite solutions for different cases) might be needed or what purpose such a definition might serve and whether any consensus about it, or even about having it, could at all be obtained in practice. However, it is also clear from the paper that (1) the European Court of Justice might at some future time follow where clear preponderance of a real change in societal values across the Member States may lead (but the preponderance can still be said to be on the 'traditional' side, although recent more 'liberal' trends have emerged in some Member States), and (2) the European Parliament (although it cannot act alone) can be an institution wherein certain groups will seek 'progressive' development even at EU level in line with 'liberal' tendencies, relying for their arguments on perhaps an isolated non-relational reading of certain individual rights. Hence the relevance of Father Grima's allusion to the relational concept of human rights and COMECE's main point about the appropriate reading of such human rights documents against the individual/collective nature of Man.

The last point relating to the European Parliament is clearly highlighted in the paper by **Eugene Buttigieg**. The paper shows that EC secondary legislation and the caselaw of the European Court of Justice have not departed from the traditional definition of family or marriage, contrasting this line with that taken in recent years by the European Court of Human Rights in Strasbourg. On the other hand, he argues, citing the work of McGlynn, the European Parliament, the Commission and the Council have shown a more 'progressive' stance but without any consensus emerging, although there has been a 'widening' of the definition of family for purposes of free movement that still respects, nevertheless, the position of the host state. The entry into the Union of Malta and other 'conservative' states is seen, in conclusion, as lessening any chances of any liberal moves at European level.

The theme of free movement and commitment to family life in an essentially 'economic context', if not to 'family law' as such, is taken up by **Ivan Sammut**. He suggests that the developments that have come about in the area of free movement of persons following the introduction of judicial co-operation in civil matters cannot lead to outright harmonization of family law but he sees them as presaging an embryonic EU family law, through 'spontaneous harmonisation', though the main thrust has been in the area of protection of the rights of the child and of family unity. This is not to say that human rights arguments can be taken as far as some liberals would wish, for the cultural restraints argument remains strong. As for the rest, he argues for a functional comparative law approach to equitably resolve the real human difficulties caused by the absence of harmonization in the family law field. He refers to the ongoing academic work being done in this field to seek to arrive at common principles through a comparative bottom-up approach. There is no current agenda to draft a binding uniform family law. However, the fact that some 15% of marriages in Europe are entered into by persons of different European nationality means that some level of European family law is needed to address the painful fallout of cross-national family

breakdown. The search is for principles in private international law that lead to measures or remedies that are just, appropriate and neutral vis a vis the essential differences between the family laws of the Member States.

Education and Knowledge for Democracy and Citizenship

Nevertheless, we ignore at our peril, and at the risk of injustice, the fact that all European polities and legal systems, including ours in Malta, are rooted in the democratic secular tradition. Diversity of opinion, belief and non-belief are to be guaranteed by the State, which in turn must listen to all citizens whether these form part of a 'majority' or a 'minority', including a minority of one. This is the starting point for the paper by **Christiane Hellermann**. An inclusive society grants fair and equal opportunities to all those lawfully within its territory. Equality means treating different people differently but fairly within the whole. While religious values will shape our love and charity towards the 'foreigner' in our midst, Hellermann emphasizes the imperative of principles, ideas and values associated with a democratic, inclusive and non-discriminatory State. Within this construct freedom of belief is vital. She writes that in the context of minority groups and immigrants within each EU Member State it is important to acknowledge different cultural backgrounds and practices without essentialising and totalizing them. Above and beyond diversity is the idea of *one* civil society - a European civil society. Families are a key component of civil society. Yet, we find the importance of families often neglected in public life and in politics; and this is particularly true of families that do not fit the mould of the 'traditional family', and even more of families at the social and cultural margins of society. The message is that all forms of exclusion are bad - for the individuals or groups concerned and for society itself. She argues then, on the basis of human rights and citizenship, for a class/social position-sensitive perspective. The only labels we need and should employ are the labels of poverty, risk, marginalisation, exclusion, and we should seek to work to eradicate these and their causes. Our allegedly homogeneous society excludes the different. Her answer: we should approach family issues from a social ("class" in the sense of social position) perspective. This means universal access to education, health, exercise of human rights, irrespective of social status, profession, gender, religious beliefs, ethnic background and so on. For all families, this must mean access to adequate health cover, education, childcare, gender equality, safety at home and in public, and even financial assistance when needed. Social exclusion and poverty are societal ills. They weaken and damage a society. The answer is support and opportunity for all. This means that emerging policies affecting families must act together with other policies to promote a tolerant and open society based on social coherence and quality as well as social assurance, equality, dignity and respect for difference. Society must be understood as a dynamic process. Both concepts, those of diversity and process, are in straight opposition to the static and monolithic. Even culture and religious belief cannot be seen as unchangeable, but must be seen rather as dynamic changing processes. Flexibility and acceptance become of central importance in the political and daily life of a democratic, inclusive society. Family and parenting are of central political concern, and we can never underestimate the impact of social policy affecting families on the formation and perpetuation of democracy and civil society.

The next two papers take this idea forward. Kay Gretchen speaks of 'nurturing social ease through knowledge' with the emphasis on each being open to 'knowing' 'the other' while

Lina Caruana and Marselle Delicata emphasise the role of education, including education in the family, for citizenship focused around universal values and for political morality. **Kay Gretchen** argues for a pause in the drive towards social integration in Europe to allow time for mutual knowledge to develop. Some might say the two should be linked in family policy. But Gretchen wishes to see less emphasis on defining values for all, a pause in which (she admits, an unusual strategy) could in time aid in the emergence of social ease. In particular, she writes, the experience of the United States shows that a neutral public stance on values does not decrease, but indeed supports, diverse religious expression. Meanwhile, civil society organizations can help to cultivate the trust needed for civic peace by collaborating in addressing problems common to all, such as drug addiction, unemployment, problems of the aged and so on. The evidence points to a capacity for openness at the cellular level of civilizations; so, she writes, let us nurture this into healthy social relations. We need to understand each other better. It is important, she writes, to differentiate between Islam the religion and cultures that espouse Islam. And we must learn to think less monolithically, she writes, echoing Hellermann. She cites Geertz, who says: “We live in a bazaar, not a cathedral”. Lest we become too disoriented by this fact, and prone to enmity and discrimination or violence, Gretchen proposes the antidote of knowledge rather than forced tolerance or ‘integration’. She acknowledges that some segments of society will resist this, and this makes the building of social peace on a foundation of understanding a long-term project. Nevertheless, the cornerstones have been laid in various communities throughout the EU. For her, rather than rushing to seek to define European values for families, the best guide for family policies at EU and national levels for the moment is to take a neutral stance towards private values, as these are often coterminous with individuals’ view of the sacred. In the meantime, civil society can build trust, through enlarging and disseminating knowledge, which includes political and cultural values, and by identifying and alleviating the common problems faced by all. In the end, indeed in the beginning, it is dialogue that is needed. She strongly argues that the national curriculum must provide for learning about ‘the other’ and especially by teaching comparative religious studies. But beyond formal curriculum needs, there is the broader issue of the culture of the school for all-round formation. It goes without saying that the media have a responsible role to play for they can support such efforts as are needed or undermine them.

Lina Caruana and **Marselle Delicata** would likely disagree with Gretchen’s premise. They argue that the search for universal values through education is imperative if we wish to see a new ‘political morality’ in practice at all levels. There is the need to review education for its content of spiritual universals, traditional beliefs and national identity, if universal values are to motivate our day-to-day actions, including our day to day politics. And for political action to be moral it needs to be connected to the world of practice and the concrete (the “transcendence of values”). The transcendence of universal values into human action is a significant perspective to the humanization of society and social cohesion. This is where civil society can play a crucial role. And the positioning of spirituality in education has become a central theme, for the multi-cultural (or better ‘*inter-cultural*’) process in a globalised world cannot take place if not grounded in a universal spiritual base. It is this main theme that is developed in this paper with reference to education in and for the family, away from the ‘economism’ or consumerist model to the spiritual or the ‘culture of spirituality’. School curricula should respond to this quest for spirituality that is present in all cultures, working on the paradigm of unity in diversity. Citing Torres, they argue that

without a serious exploration of the intersection between cultural diversity, affirmative action and citizenship the democratic discourse per se is at risk. Crucial is the transmission of meaning, value, purpose, dignity and decency to children, all the time linking theory to practice. Civil society can bring cultures and communities together. One task is to rid ourselves of the pain of suppression, in particular, of our own spirituality. We all, together and in dialogue, need to recover the repressed human factor of spirituality.

Education certainly takes centre stage for many of the contributors to this Report. The next paper by *Victor Martinelli* ties in with a point made by Father Joseph Ellul and is also practically focused, this time on the right to education and the educational needs of the child asylum-seeker - so a third-country national - in particular. His paper has implications more widely for the way in which foreign, or otherwise 'atypical' children, are educated here. Apparently, our approach is to 'treat them without discrimination', meaning that their specific needs are simply not provided for, leading of course to educational disadvantage and hardly achieving any true intercultural benefit either for themselves or for their fellow classmates, or longer-term for society should Malta in the end become their permanent home. There is a dire need then for good practice, starting with understanding by and training for the educators, within the framework of an inclusion policy. One priority need is for proper instruction in English and Maltese as second languages. For the third country national, education in the culture of Malta is equally vital, even if a number will be moving on to another country. The reader is referred to the full list of concrete and (with professionalism and goodwill) achievable, proposals made by author, and his arguments for their introduction. It is to be hoped that they will be acted upon, for they are of utmost importance not only to the specific group identified by the author but also to other atypical individuals and groups in our society who find themselves the victims of a system that emarginates them.

But let us say that European integration will proceed apace, and no pause will be allowed us (Gretchen), and that we need to be acquiring this knowledge of 'the other' even as we come closer as peoples: then what? What lessons have been learned about "Europeanisation"? *Mark Harwood's* paper is a study in 'Europeanisation' with particular attention to the question of civil society and values. He explains what has come to be meant by 'europeanisation', how it impacts on domestic political systems and what consequences it may have for civil society and the values that civil society groups promote. Conceptualising the EU as a multi-level governance system sees the latter as offering countless opportunities and pitfalls for civil society. In particular, civil society groups will sooner or later need to associate with their counterparts and larger Europe-wide groups. This can work to increase influence at European level but it can equally boost one's influence at national level. Indeed, it has been observed, he writes, that domestic civil society retains its primacy as a determinant in the national political system, for it is domestic civil society that has the ear of domestic governments, MEPs and representatives in bodies such as the Committee of the Regions. And each domestic political system is unique. Yet membership of the EU can mean that what civil society can expect or not expect from the national government can change as a result. On the other hand, the need to better co-ordinate national EU policy means that governments are more likely to incorporate civil society into decision-making. The change in values associated with EU membership remains a nebulous area of research. Collective expectations of national and European institutions change over time, but more

disparate issues such as concepts of family, gender or citizenship often change within a wider framework not exclusively associated with EU membership, making ‘EU-ization’ a component of change but not an exclusive component.

A Closer Look at Malta

The former papers sketch the broad canvas against which one would argue that constructive dialogue and policy debate and action on particular issues might take place, with a due sense of urgency.

The next group of papers from NGO activists, educators and writers in Malta is intended to present particular phenomena in contemporary Maltese society and the NGO response as current. Some of them show how some activists, and their organizations, working in fields related to the family, women’s and men’s rights, children’s rights and education see their role in the process of the inculcation and practice of values, sometimes with specific reference to religion and sometimes to religious diversity in the context of family and families. Some also chart value-change in Malta. Others put the Maltese context in the broader EU policy and legislative context. All begin or continue a debate on the particular issue treated rather than end it. Part of that debate will be about the very role of such organizations. The value of a number of the papers also lies in stating the official positions of the represented organizations on the matters in issue, presenting a picture of the current reality of civil society activity in Malta and inviting debate on the future role of civil society engagement. In several cases, they represent the first attempt to site the Maltese debate, both on the issues themselves and on the wider question of the role of civil society, in the context of a European and even wider debate.

With a focus on work-life balance, **Anna Borg** points to the prevailing social and corporate culture, centred around the ‘male bread-winner’ model. She emphasizes that in order to challenge socially constructed gender roles and the gendered nature of organizations, parallel changes may need to be happening on a personal, domestic, political, social and even on a religious level. Yet, she argues, change has happened and will happen gradually ‘from within’ as women and men make new choices in favour of a higher quality family life. This is a route, if the slower route, to organizational change, for “the socially constructed manifestation of beliefs and values is often unknowingly transferred via individuals to organizations”. This paper goes beyond the normal emphasis on the use that could be made of the mechanism of the collective agreement, with the push coming from the social partners and primarily, perhaps, from the trade union side. For Anna Borg argues that having a family-friendly policy in place, even an agreed one, does not guarantee take-up, so that ways have to be found to put such policies and agreements into practice without penalty to work progression or to financial reward for the worker and with benefit to employer. It seems that it is equally up to men to assert their rights as husbands and fathers, to respect the equality of their partners, to assume the burdens and joys of fatherhood, and to push for organizational change. This organizational change need not detract from the goal-realising objectives of the organization, for it can and should mean searching co-operatively for flexible, innovative and creative work practices that make both ‘life’ and ‘business’ sense.

Charmaine Grech also addresses the issue of work-life balance. She explains the policy of the General Workers' Union. She writes that the Union recognizes the single parent family as 'family'. Labour market participation of women with family responsibilities affects the concept of the traditional family, paid work and welfare state patterns of organization. She asks how society, including the General Workers' Union, can help the evolution of working life without compromising family stability. One of the answers to the dilemma, she writes, lies in the creation of a flexible labour market and it is up to all the social partners to promote a flexible working environment that will facilitate the reconciliation of work and family life. It is only through sensitizing people through education that a change in mentality can be achieved, she writes, and there is much work still to be done in this area.

The plight of the teenage mother, and the means of redressing the economic disadvantage associated with teenage motherhood, or indeed with single parenthood at a young age, is the subject of the paper by **JosAnn Cutajar**. Nineteen per cent of all births in Malta take place outside marriage. Implicit in the statistics are changing values, for example that while an unwanted or unplanned pregnancy may well still result in delivery, it does not follow that it will lead to marriage. It is clear that female-headed single parent families are at risk of poverty, and the children are at risk of educational under-performance and under-development. The focus of this paper is again on education, in particular the continuing education and skills acquisition of the young mother, so necessary to prevent poverty, disadvantage and exclusion. Matters do not appear to have improved much since the time in the late 90s and early this decade when many of the statistics used in the study were compiled. One awaits the results of the 2005 census. Yet it is recorded that government has put in place certain measures to assist in the search for financial security (even independence) for single parent families. It is also recorded that society, civil society and family of origin may have become more accepting and supportive, needed qualities in a society that values the right to life of the unborn. Yet, again, the author argues that more needs to be done to motivate and support single parents to continue with their education and enter employment, and a number of wide-ranging recommendations are made.

It is in context here to refer to the paper by **Tony Mifsud**, a leading activist in favour of the rights of the unborn child and Coordinator of the Malta Movement for the Rights, Protection and Development of the Unborn Child. This paper will be of interest to all, but especially to those who are not familiar with the articulation of a Maltese Catholic NGO approach to the issue of abortion. Social policy in the round in Malta (and Tony Mifsud for one, argues, elsewhere in Europe and beyond) should be expected to evolve according to the tenet set out by Cardinal Connell of Dublin, who declared that "The genuineness of our conviction about the right to life of the unborn child must be matched by our willingness to give support to those for whom the prospect of the birth of a child creates difficulties which they feel unable to face". He argues that all the unborn everywhere should be regarded as "the common heritage of mankind", calling then for a global policy of humankind's respect for itself.

The previous paper referred briefly to the Cana Movement, an NGO with a Catholic ethos that works with engaged and married couples, educating, advising and counselling them about marriage and parenthood. The contribution to this Report of the Cana Movement's representatives, Father **Joseph Mizzi** and **Anna Maria Vella**, clearly indicates how one of the foremost family-oriented civil society organizations, and one with an impact on practically

every engaged couple in Malta and Gozo, sees the current climate for the family as an institution both in Malta and elsewhere. It is also a classic exposition of the way in which it conveys its message, as well of the message itself.

It will have been clear from the preceding papers in this section that a certain tension exists in Maltese society between the traditional and the post-modern view of the family and family roles. The tension arises from the clear wish to retain the value of the close-knit family and the rearing of children into adulthood while reconciling this with the legitimate expectations of, and the various demands made on, each member of the family in the modern world. **Adrian Grima** writes that literature does not provide a mirror of society and does not pretend to do so either; but it does allow writers to explore the individuals and the community about whom they choose to write and their work often provides insights that one would associate with qualitative research. Writers interpret and evaluate; their work often reflects what they perceive in the real world. He refers us to Maltese post-Independence literature as reflecting the process of secularization within Maltese society that started after the end of the second world war and gathered pace after Independence in 1964. This literature has questioned not only the idealization of the traditional Maltese family, with its religious beliefs and affiliations, but also identification of the individual with the group. He refers to the work in the field of sociology done by the late lamented Anthony M. Abela, who noted that while value change has been a feature in Maltese society, the Maltese remain jealous of, and centred in, their family values. Yet many stories remain untold in Maltese literature, there are many tensions bubbling beneath the surface, and fundamental changes to discourse about the family in Maltese literature can both reflect what is happening in everyday Maltese life and construct and articulate new realities.

Back to the Wider Picture

The last two papers bring the focus back around to the wider picture, within which the microcosm of Malta features and on which stage Malta must play its role. The first of these, by **Audrey Gatt**, represents a brave attempt to take the wider angle, and to examine from a Europe-wide and intercultural and multi-religious standpoint the controversial issue of the ethics, politics and law of stem-cell research. The paper shows the struggle that awaits those prepared to, or whose duty it may be, to consider all the evidence as it appears and then possibly to re-interpret, re-evaluate, or rethink in the light of interaction with others and in the light of scientific discovery. If European level legislation is at some stage called for in matters impinging on ethics, then we had better get used to the processes of thought and argumentation. So Gatt asks, in the light of background religious positions from Christianity, Islam and Judaism, what stance has been taken in the European Court of Human Rights, the locus where ultimately most of these issues are likely to be determined from the legal perspective of 'rights'. She argues that, while the European Court of Human Rights is, of course, not a legislature, it has paved the way, through its rulings, for a European ethic on the issue of 'reproductive rights'. The reality may be more prosaic, and of comfort to all European States in its regard for the diversity of opinion and law in those states and therefore for the status quo, and the freedom to evolve, in and of each state. This would mean that the Court's rulings could not, in fact, be taken as pre-empting what a European legislature might or might not do, save possibly in leaving the matter open, or a matter of national choice as a matter of subsidiarity, even assuming there were competence

in principle. But Gatt is indeed right to point to the need for further and deeper discussion in Malta on such issues. Her call is not (necessarily) for (any particular) change, but for proper discussion in Malta.

I am certain that all would entirely endorse this call, not least because one cannot possibly hope to influence decision-making at any level outside these islands (and the Cana Movement and the Malta Movement for the Unborn Child clearly hope to be able to do so; their papers refer) unless one has a properly articulated position that makes sense in a pluralist context. In seeking honestly to arrive at the truth for ourselves we may arrive at it for others also. It may well be that the only truth turns out to be the traditional truth of our Faith, but this cannot stop us asking the difficult questions that the progress of human history causes all around us to face. That attitude will simply make us irrelevant, and useless to ourselves, and especially to our young, who ask increasingly to be convinced rather than to be told. In so far as the European Council will continue to address such issues, it has committed itself to doing so “consistently with common fundamental values and ethical principles”. As Maltese, we have an obligation to contribute to any and all debates, and this will require study, thought and open and respectful discussion. Gatt’s (like Soler’s) paper has been left for last because it is an attempt to site in discourse so many of the main and side issues raised in this Report. Malta’s Roman Catholic pedigree is beyond question, as is the adherence of a diminishing but still large majority to the tenets of the Catholic faith. That many of its politicians adhere publicly to such tenets and would see them enshrined in law, is equally clear. But that Maltese society is, and will become more, pluralist and multi-cultural is just as clear. The theatre for the mediation of different values will, unless it be civil society and Parliament, inevitably be the courts of law. It is equally clear that, in the absence of any option for splendid isolation from the rest of the universe, the law to be applied will need to be secular and respectful of all our international obligations under various Human Rights Charters and European Union Law - hopefully themselves law that we will have helped to shape. It also equally clear that we will retain a large margin of autonomy and discretion at the legislative level in such matters for the foreseeable future, for the European Court of Human Rights, as the regional human rights court, will take a specific and binding line in matters of ethical content only if sure it is acting on a European ‘consensus’. It is this consensus that we can all work towards through dialogue. However, we would ourselves be helping pave the way to a large consensus to which we were in principle opposed (due to its lack of an ethical content to which we subscribed) by failing to fully *and effectively* participate in any European and wider debates. It is crucial to remember that these debates necessarily take place in a secular context and a level of sophistication is needed to translate religious conviction into ethical argument such as can affect the flow of secular debate.

A similarly brave attempt at bridging the perceived ethical differences between the main religions, or at least contributing to a better understanding as to their respective positions on matters of ethics and the family, is made in the final paper by *Chris Soler*, who asks whether Christianity, Judaism and Islam are not too often presented in a false light of confrontation of values. With the humility of a lawyer moving in the area of comparative religion and law, he leaves the reader to make the connections.

One thought that came to the editor in the process of reading these two last contributions is that politics being the art of the possible, politicians of all faiths or convictions may be guided in the secular framework by the art of seeking to achieve the achievable by consensus. Nevertheless, it seems clear that the weight of this Report taken as a whole takes a stand, in general, against ‘secular drift’. It calls for more than the taking of religion ‘into account’ as a politically-relevant factor in decision-making. It calls for a role for religion and spirituality in politics and decision-making, grounded on the perceived re-assertion of their values by millions of Europeans of all faiths. Many of the contributors agree that the root cause of misunderstanding, mistrust, suspicion, even fear, of ‘the other’ is lack of knowledge, a lack of knowledge that leaves the field open to exploitation by the fanatic and the extremist. In such a climate of ignorance and irrational fear, it is human rights that become the first victim, as society becomes a forgotten concept, lost in fragmentation, polarization and exclusion. Knowledge and education are the anti-dote and the salvation of society, and the challenge of educating the current and future citizen is an ongoing and urgent one. Civil society can and must play its part in reminding all to aim for the common good through the respect and pursuit of the good of all its parts. Dialogue at this level can point us all in the right direction.

General Conclusions and Recommendations

So, finally, what general conclusions and recommendations would the project coordinator draw from this study?

1. That it be recognized that economism, consumerism, and individualism in all guises may have gone too far, and that the people of Europe are re-discovering their spiritual roots or intensifying their individual search for spiritual meaning. That, therefore, ethics and values need to be better and more fully integrated into policy-making. That religion is a powerful force in this regard and must be given due space in policy and decision-making.
2. That at the same time, there is a need to recognize that the European tradition is for this to happen within a secular framework, but a framework that is fully respectful not only of freedom of conscience but also of freedom of religion and the practice of religion. That this is, or should be, the framework in all of the Member states and in the Union itself. That one major obstacle to real dialogue with our Neighbours may precisely be resistance on their part to contemplating such a framework. That the meeting point nevertheless may well lie in the concept of secularity *with respect for and dialogue about values*.
3. That the reality of European pluralism, democracy and multiculturalism requires us to develop a model of policy- and decision-making at European level on the lines set out in the Constitutional Treaty, enabling fullest dialogue with Churches, Religious Associations and confessions. That the relevant Constitutional Treaty provisions should either come into force through the ratification of the Treaty or be otherwise brought into operation through the development of structures and working practices that make them happen.

4. That at the same time, this must be understood as more than inter-religious dialogue at the level of the Churches, Religious Associations and confessions on doctrinal issues. It means that inter-culturalism at the level of the people, and therefore of civil society, is key to the *practice* of the values of mutual respect and solidarity. NGOs have a major role to play in today's European democracies. They themselves must be living examples of inter-cultural dialogue as well as the locus of dialogue about values and the spring-board for appropriate political action.
5. That education in inter-culturalism is crucial. This must be present at all levels. But the school is the prime site, requiring in the first place education and training of teachers and social workers. Curricula urgently need to be revised accordingly, including religious studies curricula. The concept of citizenship needs to be revised, and incorporate side by side with historical loyalty to the 'state' a loyalty to societal values, defining society in the widest terms conceivable, to encapsulate, in a globalised world, all of human-kind. We need to overcome our shyness about such language, for unless we recognize that we are all truly one, and responsible for, and affected by, one another in one global society, our values will appear meaningless to those either not within our borders or who remain excluded within our own societies by being excluded from the sphere of application of the universal values that we profess. That this requires soul-searching and internal change, a new grasp of the meaning of identity, and a willingness to dialogue. That it requires the same from our Neighbours.
6. That the European Union would do well to devise, if not a Family Policy, a Family Strategy through the actors and mechanisms identified above. That this strategy be centred around human dignity and equality. That it be centred also around the concept of family stability and the values of love and respect for each member of the family and the development of the human person. That human rights, even in the context of the family, should be seen in the dual perspective of the individual and the relational and collective aspects. That this means equality of rights and duties and therefore also in all matters pertaining to employment, and appropriate policies on work/life balance for the benefit of both sexes and of the family as a whole. That we should work towards a moral consensus that respects the views of the majority and of all minorities claiming legitimate respect for their respective moral positions. That any definition of 'family' should take carefully into account both the general context of the common good and the particular context of individual affective relation, so that true family values be the guiding principle as to what is to be treated as a 'family' and how it is to be treated if it is to be respected. That economic objectives, however pressing they may be, be regarded as secondary to the above, and it be recognized that economic and material prosperity for all can only be achieved in a just and sustainable way if they are so regarded.

These are the general conclusions and recommendations that will be further discussed and elaborated upon in a Conference to be held in Malta in September 2006.

**RELIGION AND THE
FAMILY - A MALTESE
ACCOUNT IN THE
WIDER CONTEXT**

THE PLACE OF RELIGION IN MALTESE PUBLIC LIFE

Rev. Dr. PAUL PACE

The discussion on the place of religion in public life is as old as humanity itself, and it shows no sign of abating in our own times. In the Maltese context, where the Catholic religion is culturally still so strong, this debate is of special importance as we embark on our EU experience.

The latest discussion on whether to place an image of Christ on our euro coin is very indicative not only of certain attitudes which die hard among us, but more so of the enduring importance of religion and the emotions it can easily produce among the Maltese.

Yet it is obvious that in a very real sense, this is not only a Maltese debate, but a universal one. The furore around the publication of the Danish cartoons is just one of the latest examples, but new ones seem to appear every week. Religion finds itself accused of most of our world's mishaps, from fundamentalism and terrorism to the rising toll of AIDS victims in the developing world.

Speaking very broadly, one can distinguish two main positions in the debate on the place of religion in public life within democratic societies. There is the liberal position that largely excludes religion and religiously motivated arguments from the public debate; then there are those who, claiming that it is in fact impossible to eliminate religion from the public debate, advocate an even wider discussion which includes all views, including the religious one.

The Liberal Position - John Rawls

The two basic tenets of liberalism are equality and freedom. Admitting religious argument in the political and public debate would mean giving an unfair advantage to those who hold religious ideas over those who do not, thus imposing an unacceptable level of inequality. The liberal position claims that religion should have no place in public debate, especially in our pluralistic society, for it is only divisive and will end up by imposing one set of beliefs or behaviours on free citizens. 'A public and workable agreement on a single and general comprehensive conception [of the good] could only be maintained by the oppressive use of state power'¹.

¹ JOHN RAWLS, 'The Idea of an Overlapping Consensus', *Oxford Journal of Legal Studies* 7 (1987) 1-25, at 4.

Moreover, since September 11, religion is seen by some to be the main cause of violence and fanaticism in our world, so that it is best excluded from the political discussion. Huntington's famous assertion that 'Islam has bloody borders' epitomises the basis of the claim that all religion - and not only Islam - is inherently divisive and generative of conflict so that the use of religious arguments in the public arena will certainly lead to greater division, possibly to a clash of civilisations. The main virtue of our times should be tolerance of the different viewpoints existing in our societies.

Of the many versions, more or less radical, of this position, the one which best seems to grapple with the complex issues involved is that of John Rawls. The question of the place of religion in public life and debate was of constant concern to the Harvard philosopher in all his writings, and while he retained his position excluding religion, his understanding of the issues involved has certainly developed over the years.

Rawls' starting point is that for democracy and justice to exist, there is a real need for stability in society. Rawls believes that any discussion based on the citizens' different comprehensive views, whether religious or philosophical, will inevitably lead to the appearance of irreconcilable differences. It is in the very nature of these views that they can only be justified in a manner that is not accessible to all citizens, so that using religion-based arguments in public discussion lacks the essential element of reciprocity. Hence religion is best left out of the discussion altogether.

Only Public Reason

Thus, only 'public reason' should be allowed in the public debate, for three reasons: 'As the reason of free and equal citizens, it is the reason of the public; its subject is the public good concerning questions of fundamental political justice...; and its nature and content are public, being expressed in public reasoning by a family of reasonable conceptions of political justice reasonably thought to satisfy the criterion of reciprocity'².

Rawls' understanding of public reason grew wider and more inclusive with time. He is willing to acknowledge the contribution that religiously inspired views have made at certain turning points of the American constitutional development³, yet he insists that this 'intrusion' is acceptable only in 'emergency' situations, and the proponents of religiously inspired views have the duty to explain their position in universally accessible terms once the emergency is over.

In his final writing on the subject Rawls draws an important distinction. He confines public reason to constitutional essentials and issues of basic justice⁴, but develops the idea of the 'background culture', which he describes as neither public nor private, but 'non-public', and to which he attributes an important role in the political discussion. He describes it as the 'culture of civil society... and includes, then, the culture of churches, and associations of all kinds, and institutions of learning at all levels, especially universities and professional

² JOHN RAWLS, *The Idea of Public Reason Revisited*, Cambridge (MA)/London: Harvard University Press 1999, 133.

³ He refers to two especially important moments in the constitutional development of the United States, both of which he admits to have been religiously inspired - the abolition of slavery and the civil rights movement.

⁴ See his *The Idea of Public Reason Revisited*, 132-148.

schools, scientific and other societies'.⁵ He also speaks of the media, which he describes as the mediator between the background culture and the public political culture. Religion has every right to participate in these non public spheres, while it should be excluded from questions of public reason.

Tolerance, The Modern Virtue

Yet, in our experience stability looks less attainable in a society that understands itself as being irremediably pluralist. In this scenario, it is claimed that rational discussion is possible only if our society is characterised by tolerance, the virtue that will guarantee stability. Without tolerance, our societies would soon fall apart, especially if the discussion were to include comprehensive views, whether religious or otherwise.

Tolerance began to be seen as the ideal for our Western societies in the 16th century, when the Christian religion was no longer a force for unity but became the source of deep and often violent divisions all across Europe. Early modern Europeans realised that waging wars of religion was only self-destructive, so they chose to accept differences in religious affiliation. This option for tolerance took a long time to be realised in practice, and was fully embraced for the first time in real terms only in the US Constitution.

This perceived link between religion and intolerance, even religion and violence, led the Enlightenment to reject religion, restricting it to the private sphere, together with other philosophical and ethical choices of the individual. Throughout modernity this process was further hastened by the claims of the natural sciences to exclusive and absolute objectivity: the only absolute truth was that which could be arrived at empirically, scientifically; all the rest was to be confined to the private realm.

The step to making tolerance the ideal of our culture was then a small one indeed: morality is considered to be a private matter, and society should not impose any standard on any of its members, except, perhaps, the duty not to judge the behaviour and the moral choices of others.

Yet, is Tolerance Enough?

Our commitment to the dignity and equality of all members of society certainly ranks among the greatest achievements of modernity. Yet when tolerance was first put forward as the royal road to achieve these high ideals, this happened in the context of a strong moral consensus and a widely shared vision of society. Nowadays, we realise that contemporary pluralism reaches much deeper into our life, so that the real moral consensus is much thinner than in the 17th and 18th centuries. Consequently, a shared vision of society has become much more difficult to articulate.

As the range of our pluralism expands, we seem to harbour more doubts about the validity of the option for tolerance. What is supposed to strengthen our democracy by acknowledging the equality of all views, sometimes seems to be leading us in the opposite direction - towards ever greater individualism and fragmentation with a consequent loss of a

⁵ JOHN RAWLS, *The Idea of Public Reason Revisited*, 134 and footnote.

sense of community: we seem to have lost our ability to engage in any type of moral argument. As a result of this all-pervading individualism, we seem to be experiencing what Charles Taylor called the third malaise of modernity, ‘a society in which people end up as the kind of individuals who are “enclosed in their own hearts”...where few will want to participate actively in self-government. They will prefer to stay at home and enjoy the satisfactions of private life’⁶.

With tolerance as a starting point, setting the agenda of our public, political debate takes on a new twist. Should we deal only with issues of procedure, about ways of ensuring equality before the law and the structures of the state, or should we also try to answer questions of greater substance regarding what is acceptable and to be sought in our life together? This is a vital question which somehow seems to surface all the time in our debates. Those who hold the view that we should give precedence to right over good insist that society’s duty in this respect is only to ensure that all citizens have all the space necessary to follow their own private choices; matters of substance should not be discussed in public for they ultimately belong to the private space.

Yet we are facing more and more situations which seem to put into serious question the position that all we need to achieve a good life together is tolerance and adequate rules of procedure. There are, as David Hollenbach puts it, ‘Problems that tolerance cannot handle’⁷. Vital complex problems like global poverty, stem cell research or religious fanaticism, to name but a few, prove how insufficient a live and let live attitude can be. Our present predicament seems to call for a more daring and engaged approach to public life, one that is willing to go beyond tolerant individualism to identify and achieve the good of all. No wonder that the phrase ‘common good’ is being heard more often in the public debate. This is the real discussion that will bring not only stability but justice and effective dignity to all members of our global society.

What Place for Religion?

Many authors, like Michael J. Perry⁸, David Hollenbach⁹ and Jeffrey Stout¹⁰, ask whether it is realistic to exclude religion from this vital public discussion. When surveys repeatedly show that most people still choose to call themselves religious, and that religion provides many (if not most) citizens with their most basic motivation in life and their fundamental understanding of the world and of human life, it becomes more difficult to justify excluding religion from the public discussion, especially if this is done in the name of democracy. Michael Perry even opines that these convictions can be the *principal* grounds of political deliberation and choice.

⁶ CHARLES TAYLOR, *The Ethics of Authenticity* Cambridge (MA)/London: Harvard University Press 1991, 8. The other two malaises of modernity, which are the cause of this third one, are individualism and the rise of instrumental reason.

⁷ *The Common Good and Christian Ethics*, Cambridge: Cambridge University Press 2002 32-61.

⁸ MICHAEL J. PERRY, *Love and Power. The Role of Religion and Morality in American Politics* New York/Oxford: Oxford University Press 1991, *Under God?: Religious Faith and Liberal Democracy*, Cambridge: Cambridge University Press 2003.

⁹ ‘Religion and Political Life: Theoretical Issues’, *The Global Face of Public Faith. Politics, Human Rights and Christian Ethics* Washington DC: Georgetown University Press 99-123, besides *The Common Good and Christian Ethics*.

¹⁰ *Democracy and Tradition* Princeton: Princeton University Press 2004.

‘The fundamental point is this: One’s basic moral/-religious convictions are (partly) self-constitutive and are therefore a principal ground - indeed, the principal ground - of political deliberation and choice. To “bracket” such convictions is therefore to bracket - to annihilate - essential aspects of one’s very self. To participate in politics and law - in particular to make law, to break law or to interpret law - with such convictions bracketed is not to participate as the self one is but as some one - or rather some thing - else’¹¹.

Moreover, while there is no doubt that religion is sometimes the motive for violence, there is also much evidence that it is often a source of reconciliation.¹² The Catholic Church has become one of the most vocal defenders of human rights the world over, and Pope John Paul’s radical and consistent disagreement with war during his pontificate won him respect from many otherwise critical commentators. The same can be said of other religions, which are an inspiration to innumerable peace loving citizens and movements, in diverse situations ranging from Cambodia to Northern Ireland, the United States and South Africa.

Another area where the positive contribution of religion to public life is being increasingly acknowledged is that made by communities of religious people to the common life. Research shows that persons who are religiously active tend to be more involved in public life than others who are not. People who take their religious life and duties seriously, seem to find in their religion a higher motivation to participate in civic life: they tend to vote more, be more active in civic movements, be members of trade unions and political parties, and serve on school boards.¹³

The corollary to these assertions is that a religion-based position claiming such an important place in the public debate must be capable and willing to accept challenge and criticism. Perry, in line with contemporary Catholic teaching on religious freedom and the imperative to dialogue, calls for as wide a discussion as possible - an ‘ecumenical’ discussion - where all views and their foundations are welcome. This calls for attitudes which go beyond mere tolerance towards a more serious engagement for the common good and deep mutual respect, qualities which are not always automatically identified with people holding religion-based positions.

The Case of the European Constitution

The anti-religious bias in our European societies is much stronger than on the other side of the Atlantic. In Europe, the modern liberal state was born in opposition to religion, and particularly to Christianity, which in turn proved incapable to read the signs of the times, and remained a staunch supporter of the *ancien regime*.

No wonder that even after more than two centuries, the debate about whether to include a reference to God and Christianity in the European constitution was passionate indeed. Many, including the late Pope John Paul II, were advocating an explicit mention of God and

¹¹ MICHAEL J. PERRY, *Morality, Politics and Law* Oxford: Oxford University Press 1988 181-182.

¹² See R. SCOTT APPLEBY, *The Ambivalence of the Sacred. Religion, Violence, and Reconciliation*, Lanham MD: Rowman and Littlefield 1999, chapters 4 and 7.

¹³ SIDNEY VERBA ET AL, *Voice and Equality: Civic Voluntarism in American Politics* Cambridge MA: Harvard University Press 1995.

Christianity in the new constitution, mostly on the basis of what was claimed to be the undeniable Christian roots of European culture.

The European value of *laïcité* seems to have prevailed, but not wholly. The Constitution opted for a realist approach which rejected both the rigorous exclusion of religion from political affairs, and the confessional option.¹⁴ In its article I-52, the Constitution says that:

- ‘1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
2. The Union equally respects the status under national law of philosophical and non-confessional organisations.
3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.’

This formal constitutional acceptance of a structured dialogue between the Union and the Churches and other religious communities and associations acknowledges the public role that such bodies have for the democratic and social development of Europe and its member states. Indirectly, it is the acceptance of a legitimate public role of religion and religion-based arguments.

The Malta Experience

The history of the influence of the Catholic Church on the legal and political development of Malta has still to be written¹⁵. Our country certainly has a long and varied history of close encounters between politics and religion, both under the non-Catholic Imperial administration and in our years as an independent state. Often these encounters were intense and passionate, with the participants ending up bruised in the process. All acknowledge that these methods belong to the past, yet there is no doubt that religion, and specifically the Catholic religion, is still a strong force in Malta. The vast majority still describe themselves as Catholics, sharing the main tenets of that faith. Most children are baptised, most marriages are still celebrated in Church, and external signs of religiosity, from house names to village festas, show no sign of disappearing. For many parents it still seems quite important to send their children to church schools, and Sunday mass attendance is still much higher than anywhere else in Europe. Malta is one of the very few countries world-wide where divorce and abortion are illegal.

Yet there are many clear indications that these ties are growing weaker, for while the external signs of belonging to the Church are still there, more and more feel free to choose their own lifestyle. Anthony M. Abela calls this trend an ‘individualized Catholic identity’, where one sees oneself as a member of the Church while feeling very free to dissent from the Church’s teachings in one’s personal life options. Abela defines this movement as:

¹⁴ KONRAD GRECH, ‘What future for Christianity in the visionary “Future of Europe”’ *Orbis* 2/2 (2003) 3-5.

¹⁵ For the story of this relationship in the post war period, see, among others, HENRY FRENDO, *The Origins of Maltese Statehood: A Case Study of Decolonization in the Mediterranean*, Malta 1999, PIROTTA, J.M., *Fortress Colony: The Final Act, 1945-1964*, Vols 1-3, Malta: Studium 1987- 2001.

‘a multiplicity of risk-taking and self-determining individuals who are not concerned to reconcile traditional religion with the demands of later modernity. They shape their Catholic identity in a fragmented social context. They include individualists who take most of their personal decisions by themselves, without much advice ...’.¹⁶

A recent survey among university students¹⁷ seems to reflect this trend. A sample of around 500 university students was selected and personally interviewed on their religious affiliations, beliefs and behaviour. The picture that emerges is very striking indeed.

Most students profess their belief in the main tenets of the Christian creed. Belief in God, the Trinity, Jesus as the Son of God, the Holy Spirit, the Incarnation, Mary as the Mother of God, and the after life all scored over 90%. An impressive 75% believe in the Church, while a slightly lower percentage, (72%) believe in the bodily resurrection.

These answers do, however, belie a certain amount of inconsistency if not outright confusion: more students profess their belief in the devil (86%) than in angels (82%), while marginally less say they believe in heaven and hell (81%). More significantly, belief in God and the afterlife exists side by side with other beliefs that the Christian faith considers incompatible: 13% believe in the horoscope, 23% in reincarnation and 15% in fortune telling. An even higher percentage (45%) believes in ‘the influence of other supernatural energies (besides God) on our lives’. 77% say they believe in the intercession of saints.

This ambiguity in the students’ sense of belonging to the Church is even more pronounced when we move to the questions dealing with their behaviour in the areas of sexuality, married life and abortion.

When asked about the level of their religious practice, 77% replied that they go to mass every week, while nearly 50% receive communion every time they go to mass. Nearly one fourth (23%) go to confession at least once a month.

The overwhelming majority are against abortion: only 2.5% see nothing wrong in it, and twice that number say it can be carried out when one knows the child to be born will be disabled. Yet those who say it is always morally wrong are 63%: the rest, a solid 37% accept only one exception - it can only be performed to save the mother’s life.

More than half (58%) of all the respondents agree with premarital cohabitation, and less than a third (29%) express their disagreement when asked about the morality of pre-marital sexual intercourse. In fact, 40% of respondents admit practising sexual intercourse during the preceding year.

¹⁶ ANTHONY M. ABELA, ‘Young Catholics in Malta: Similar Origins, Multiple Destinations’, in John Fulton and others, *Young Catholics at the New Millennium. The Religion and Morality of Young Adults in Western Countries*, Dublin: University College of Dublin Press, 2000, 47.

¹⁷ CHARLES TABONE et al, *Religious Beliefs and Attitudes of Maltese University Students Malta*: University Chaplaincy 2003.

The Future

I find no reason to believe that this attitude belongs only to the university students in Maltese society. In fact, I believe that, in some measure, it reflects important shifts in our value systems. This trend, together with a rapidly changing situation on the ground, with for instance, an increasing number of marital separations and rising levels of extra marital cohabitation, will increase the pressure for changes in the present legislation. At the same time, we can already see the first signs of a reaction by groups who will push for a more rightist agenda in Church affairs, putting even more pressure on the institutional Church.

One extremely important feature of the Maltese church is the impressive number of its lay members who are organised in many types of different groups, traditional and of more recent, more or less charismatic, inspiration. The sense of belonging of these Christians, of whom a good proportion are young people, and their willingness to take their Christian life seriously, is certainly one of the most striking characteristic of the contemporary Church in Malta.¹⁸

This is another feature of our scenario that will ensure that culturally, and therefore politically, the Church will remain a very strong presence, and as we move into more pluralistic waters and with new leaders, one wonders how the encounter between politics and religion in Malta, now an EU member, will evolve.

I believe that this debate will be carried out in three main areas: the family, the defence of human life and the field of social welfare and human rights. The first two have always occupied a primary place in the Church's vision of a well ordered society, and Church teaching on these areas is well developed and articulate. The recent diocesan Synod has also published a fine document on *Marriage and the Family*¹⁹, and has chosen the family as an area of special concern.

Less obvious is the Church's future role in the discussion in the social field, especially in the debate on our future welfare system, and in the area of human rights as racism rears its ugly head and as the problem of irregular migration becomes a permanent feature of our reality. The Synod document on *Diakonia and Justice* calls for participation of the Church in these debates²⁰, but it seems that these are areas where the local church still finds it more difficult to form an opinion and express it as a qualified participant in the current debates.

Religion will certainly remain a major influence in the public debate in our country for the foreseeable future, even if the Church becomes weaker as an institution. Hopefully, attitudes seeking dialogue with people of other views will prevail over what can sometimes be perceived as 'megaphone diplomacy'. More lay Christians are receiving a stronger theological and pastoral formation, and there is a real quest for community life whose

¹⁸ PAUL PACE, 'Adult Education in the Maltese Church', in *Beyond Schooling: Adult Education in Malta*, (edited by Peter Mayo and Godfrey Baldacchino), Malta: Mireva Publications 1999, 39-54.

¹⁹ ARCIDJOESI TA' MALTA, *Żwieġ u Familja*, 2003, available on line at:
<http://www.maltachurch.org.mt/Dokumenti%20Sinodu/ZwiegUFamilja.pdf>

²⁰ ARCIDJOESI TA' MALTA, *Djakonija u Ġustizzja*, 2003, 18, 21, available on line at:
<http://www.maltachurch.org.mt/Dokumenti%20Sinodu/DJAKONIJA.pdf>

witness is another important element in the public discussion in the midst of an advancing individualism.

Thus this presence of religion will not be achieved by seeking direct political power but through the promotion of human and Christian values and the strengthening of human communities, especially of the family and of special concern for the poor. As Pope Benedict says in his first encyclical, *Deus caritas est*,

‘The Church cannot and must not take upon herself the political battle to bring about the most just society possible. She cannot and must not replace the State. Yet at the same time she cannot and must not remain on the sidelines in the fight for justice. She has to play her part through rational argument and she has to reawaken the spiritual energy without which justice, which always demands sacrifice, cannot prevail and prosper. A just society must be the achievement of politics and not of the Church. Yet, the promotion of justice through efforts to bring about openness of mind and will to the demands of the common good is something which concerns the Church deeply’. (28)

It is not very easy to decipher what the Pope means by the first sentence of this passage, but there is no doubt that he is claiming a clear public role for the Church and for religion. He calls for a socially active Church, yet one willing to enter the fray of rational, non-confessional, argument to promote and safeguard the values it believes in and bring about greater justice in the world.

SECULARISM, PLURALISM AND THE REDISCOVERY OF RELIGION

Rev. Dr. JOSEPH ELLUL

While civilizations rise and fall and, in falling, give rise to others, some purposeful enterprise, higher than theirs, may all the time be making headway, and, in a divine plan, the learning that comes through the suffering caused by the failures of civilizations may be the sovereign means of progress. Abraham was an émigré from a civilization *in extremis*; the Prophets were children of another civilization in disintegration; Christianity was born of the sufferings of a disintegrating Graeco-Roman world. Will some comparable spiritual enlightenment be kindled in the “displaced persons” who are the counterparts, in our world, of those Jewish exiles to whom so much was revealed in Babylon? The answer to this question, whatever the answer may be, is of greater moment than the still inscrutable destiny of our world-encompassing Western civilization.¹

Today’s western civilization and, in our case, European societies in particular, are as fluctuating as they are contradictory, a situation that cannot but influence modern culture as well as individual human beings. At the same time we are witnessing a steady process leading from a state of *De-moralization* to one of *trans-moralization*. De-moralization was the result of a gradual and sustained metamorphosis whereby, in the words of Jonathan Sacks,² sin became immorality, immorality became deviance, deviance became choice, and all choice became legitimate. *Trans-moralization* has been the result of a process wherein the only acceptable moral judgments have become those attached to mainly environmental issues. Hence, the mistreatment or the brutal killing of an animal is considered a horrible crime, whereas abortion is deemed a matter of choice. The conducting of experiments on

¹ Arnold Toynbee, *Civilization on Trial and The World and the West*, Meridien Books, The World Publishing Company, Cleveland and New York 1958, p. 25.

Joseph Cardinal Ratzinger, now Pope Benedict XVI, has recently taken up this point in his address to the Italian Senate on 13 May 2004 in order to highlight the possible contribution of Christian communities towards the revival of Europe:

We do not know how things will go in Europe in the future. The Charter of Fundamental Rights may be a first step, a sign that Europe is once again seeking its soul. Here we must agree with Toynbee that the fate of a society always depends on its creative minorities. Christian believers should look upon themselves as just such a creative minority, and help Europe to reclaim what is best in its heritage and to thereby place itself at the service of all humankind.

Joseph Ratzinger (now Pope Benedict XVI) and Marcello Pera, *Without Roots*, Basic Books, New York 2006, p. 80.

² Jonathan Sacks, *The Persistence of Faith*, Weidenfeld & Nicolson, London 1991, p. 50.

animals by pharmaceutical companies is deemed inhuman, whereas the use of human embryos in scientific research is viewed as a sign of progress and the gateway to a better and healthier life. We hear of loud and often violent protests against genetically-modified crops, but few find problems with the possibility of genetically-modified human beings.

Behaviour is no longer related to or determined by established principles of moral conduct; rather, the question of whether an act is right or wrong is becoming increasingly dependent upon opinion polls, phone-ins, and talk shows. Taking a moral stand on an issue is purposely branded as fundamentalism, a threat on the part of religion against the independence and the rights of the state as well as those of the individual. The cases of Spain and Italy are just two recent examples where those belonging to particular religious affiliations who object to same-sex marriages and abortion are being continuously shouted down by demagogues and the voice of reasoned opposition is being intimidated into silence.

The century we have just left behind has witnessed the rise and fall of secular absolutism embodied in fascism and communism. This has given way to a culture that is multifaceted, heterogeneous and typically anti-totalitarian.

It is no longer possible to achieve a hierarchy of knowledge in a unified authoritative system. Every fragment of knowledge, every approach to reality, is dependent on its own norms, as the needs of high finance and the economy become the basis of ethics. The virtual is replacing the real as we become more isolated from the empirical world and immersed in the world of computerization.³

Hence, as we begin the third millennium the questions concerning truth, values, existence and meaning with regard to human nature reveal the limits of the secular world, which, in spite of itself, gives rise to an urgent search for the spiritual dimension of life. It is mainly when secularization gives way to secularism that a serious cultural and spiritual crisis takes place, which gives rise to a degradation of the human person and the spread of anthropological nihilism.⁴

The Rediscovery of Religious Traditions

On the other hand, in a culture which has become increasingly secularized embers of faith still glow and are simply waiting to be rekindled. Modern societies may well corrode their traditional religious base, but at the same time they open up spaces or sectors that only religion can fill. There are also instances when secular culture still adopts (albeit unconsciously) religious symbols. One of the most patent examples is that concerning those movements promoting peace. Most of them belong to the left of the political spectrum which is, at the best of times, indifferent toward anything religious. And yet, the official

³ The social theorist Jean Baudrillard sums up the situation in the following terms: Today the whole system is swamped by indeterminacy, and every reality is absorbed by the hyperreality of the code and simulation. The principle of simulation governs us now, rather than the outdated reality principle. We *feed* on those forms whose finalities have disappeared. No more ideology, only simulacra. Jean Baudrillard, *Symbolic Exchange and Death*, SAGE Publications, London 1993, p. 2.

⁴ See *Fides et Ratio*, 91.

emblem that they have adopted is the rainbow, which has profound biblical roots. It marked the establishment of a covenant between God and the whole of creation after the flood.⁵

Whereas one has to admit that personalized forms of religion and made-to-measure spiritualities are becoming popular in secular western societies, it is also true that some forms of mainstream religion with their doctrines and precepts are also making a dramatic comeback. There is no better example of the resurgence of mainstream religion than that of the present situation among the youth especially, though not exclusively, of immigrant communities. World Youth Day celebrations in Rome in 2000 and the recent debate concerning the wearing of the *hijâb* (the Muslim headscarf) in public schools, especially in France, are a clear example of this trend.

The present generation has developed a fascination with lost family traditions. It labours to remember what the previous generation strove to forget. The secular society has suddenly begun to rediscover what Harold Isaacs called 'the idols of the tribe'. What is even more fascinating is that young people are turning towards religion, not because they consider it as more accommodating, but rather because they are finding it more *demanding*. They have come to realize that the secular culture in which they have been brought up leaves unanswered the most searching questions that reside in the depths of the human soul. Hence, the search for meaning has turned again to the once much maligned and ultimately discarded role of religion.

Public manifestation of one's faith might still result in ridicule; standing up for one's religious convictions may still be dubbed as obscurantism, but it is also being increasingly met with grudging admiration. The demands of religious practice are no longer easily brushed aside as residual of superstition belonging to the pre-industrial, pre-technological era. Once again religion is having a renewed influence on societal issues, and this role will continue to expand⁶. Secular society has recently also been rudely awakened to the fact that it no longer has free rein in denigrating what is deemed by others as sacred without facing unpredictable - albeit at times regrettable - consequences.

A secular pluralistic society poses uncomfortable questions to religion. But it must also now be prepared to face uncomfortable answers. *Religion is concerned with telling people what they need to know rather than what they want to hear.*

Citizenship and Belief

It is all too obvious that the European Union as a whole has in fact undergone a process of profound transformation and is emerging as a multi-ethnic, multi-cultural society after

⁵ Gn. 9:12-17.

⁶ In this context it is interesting to note the comments of Peter Berger, one of the most eminent sociologists of religion on this very same matter:

My point is that the assumption that we live in a secularized world is false. The world today, with some exceptions.... Is as furiously religious as it ever was, and in some places more so than ever. This means that a whole body of literature by historians and social scientists loosely labeled "secularization theory" is essentially mistaken.

Peter L. Berger, "The Desecularization of the World: A Global Overview," in Peter L. Berger (ed.), *The Desecularization of the World: Resurgent Religion and World Politics*, William B. Eerdmans Publishing Company, Grand Rapids, Michigan 1999, p. 2

decades of immigration, especially from the Balkans and the Slavic regions, and recently from North African countries. The scale and speed with which this process is taking place is unprecedented in European history. As a phenomenon it has brought about awareness of the non-European “other” in our midst. The problem arises when multiculturalism becomes, on the one hand an extension of relativism and, on the other hand, a subtle way of avoiding integration into the host society because the latter is seen as a threat to the preservation of one’s religious and cultural heritage.

Modern democratic societies face the problem of cultural and religious diversity. The modern democratic nation is built on more than a concept of government by the collective will for the collective good. It is based on the notion that there is a public domain in which a multiplicity of communities with different traditions can join in the collective enterprise of citizenship. It is not merely a democracy. It is a plural democracy. This calls for a very delicate balance of restraints and it is facing great danger. As the neutral state fails to answer the most basic questions of personal identity, so we see larger societies disintegrate into religiously, culturally or ethnically defined identities. Recent events in some European states (such as the Netherlands) are a sober reminder of the dire consequences that may follow. The most important conflict in the European political landscape is not so much between religion and democracy as it is between religion and pluralism on the one hand, and religion and secularism on the other, both of which are essential elements of the multi-religious society and the ethnically diverse state.

Whereas religion and state are two distinct institutions with two distinct domains, the former has a right and a duty to guide its adherents. The state should guard against confronting its citizens with the choice between loyalty towards it and fidelity to their religious convictions. This is not an altogether new phenomenon in the European political setting. For centuries, in predominantly Protestant countries, Catholicism was deemed incompatible with allegiance to the state. In sixteenth and seventeenth-century England being a Catholic was considered sufficient ground to be prosecuted for high treason.

Today European legislators who uphold the doctrine of secularism take as their point of departure the notion that European societies are still *post-Christian*, whereas these same societies have now moved from a post-Christian condition to a *multi-religious* one. One therefore questions the wisdom of legislating with a post-Christian agenda in a multi-religious environment, especially at a time when the populations of the different nation-states are becoming less indigenous and more immigrant in their composition. The notion that “the secularization of politics is the only way to build a tolerant world where everyone can co-exist peacefully”⁷ is gradually becoming a myth. Like Christendom before it, *secular culture must either adapt to these new circumstances of a multi-religious society or else risk rendering itself obsolete.*

The more plural and multi-religious a society we become, the more we need to reflect upon what holds us together. Up until now modern society has proposed three models: that of assimilation (the French), that of the melting pot (the American), and that of a yet unclear multiculturalism (the European). However, an authentic integration cannot take place unless

⁷ Quoted from Emma Bonino’s MEP concluding address at a seminar held by the European Parliament to address the growing role of religion in European policy, 28 November 2001.

one takes as its foundation an underlying layer which is anthropological and cultural in nature, through which foreign communities may be integrated into the foundational elements of their host societies. One may call this model one of enriched identity. Its point of departure lies in the recognition of a cultural and anthropological datum that the host society has developed and strengthened for centuries, and which has led it to its own considerations regarding the human person, living in community, at work, and so forth. This basic identity, together with its constitutive characteristics, cannot be written off in order to create new models of society. However it can and should develop in such a way so as to integrate those elements of foreign cultures that may help it grow, develop, and mature. In the words of Jonathan Sacks, “we each have to be bilingual.”⁸ Following his line of thinking there is a first and public language of citizenship which we have to learn if we are to live together. Then there is a variety of second languages which connect us to our local framework of relationships: to family and group and the traditions that underlie them. If we are to achieve integration without assimilation, it is of the utmost importance that each language be given its due. Our second languages are cultivated in the context of families, which are our intermediaries between the individual and the state. They are where we acquire and learn our identities, where we develop a sense of belonging and obligation. *Pluralism must not be reduced to neutrality.* Rather it is called to recognize the very specific value of Christians, Muslims, Jews, Hindus, Buddhists, Sikhs and other believers growing up in their respective heritages. Traditions should be conserved, not dissolved, by education.⁹

We would, however, be ill-advised to ignore our belonging to the wider community brought into existence by citizenship. Recent events in various European countries have proven that such a stand creates sectarian leadership, the politics of protest, single issue lobbies, and frequently, acts of violence. The stronger the bonds of fellowship within a community, the more likely there is to be suspicion and fear of those outside its confines. Keeping alive the notion of citizenship demands the posing of significant restraints on all sides. For all involved it implies working and collaborating *for the common good*¹⁰. And herein may lie a momentous possibility, not in stubborn entrenchment and isolation within one’s own religious convictions, but in encountering and understanding secular society and pointing toward a meaning, purpose and direction that lie beyond its present horizons; what the Russian Orthodox theologian Olivier Clément has aptly described as *prophetic partnership*.¹¹

⁸ Jonathan Sacks, *The Persistence of Faith: Religion, Morality and Society in a Secular Age*, Weidenfeld and Nicolson, London 1991, p. 66f.

⁹*Ibid.*

¹⁰ On May 9, 2005 the Commission of the Bishops’ Conference of the European Community (COMECE) published a document entitled *The Evolution of the European Union and the Responsibility of Catholics*. As regards the contribution to the common good n. 42 states the following:

As Christians we share the conviction that, although politics is not everything, political action is important for our faith and our faith is important for our political engagement... When we have to take decisions, the Common Good of humanity must be our ultimate criterion. At the same time, we must be able to distinguish between levels of our actions, whilst giving appropriate importance to provisional attitudes. For it is there in the concrete reality of our commitments, that our spiritual fulfillment is realized.

¹¹ Olivier Clément, “Witnessing in a Secularized Society,” in George Lemopoulos (ed.), *Your Will Be Done: Orthodoxy in Mission*, WCC, Geneva 1989, p. 112.

The Role of Inter-Religious Dialogue

At this point need for inter-religious dialogue becomes paramount. It is becoming increasingly important and vital for fruitful co-existence between different religious and ethnic communities. It must not, however, be reduced to relativism, irenicism or syncretism. Rather, inter-religious dialogue is based on mutual respect, but also upon sincerity and frankness. Its role is not that of suppressing differences, but at looking at them as a means for creating mutual understanding, respect and enrichment. It implies maintaining one's religious identity while respecting that of the other, it demands listening as well as speaking. It is an ongoing challenge to deepen one's own faith while appreciating that of the other.

For this reason participants in inter-religious dialogue need to talk more about God lest religions run the risk of becoming no more than parallel ideologies to secularism¹². It also demands recognition of one's past and present failings and the honesty to admit them. All religious communities are undoubtedly marked by wounds, both old and new, which may lead them to justify having a 'victim' mentality. It is precisely at this point that interlocutors in inter-religious dialogue have a significant opportunity to become ambassadors of reconciliation.

Thus inter-religious dialogue becomes a way of understanding human aspirations and weaknesses. At the same time this dialogue directs them into more constructive and wholesome channels than the strife and frustrations that make up much of life, even in the midst of increasing material prosperity and consumption.

But inter-religious dialogue is by no means the sole preserve of academics and religious leaders; nor is it a matter to be left to adults for discussion. If our desire for future generations is that they live in harmony in spite of religious differences and work for the advancement of society and for the promotion of the common good, inter-religious dialogue has to begin at an early stage and within the environment where children and youths encounter each other and their differences, namely, the classroom. It would be wishful thinking on the part of any government, if it proposed to promote religious tolerance, when it is intolerant of religion in state education and where religion is, as a policy, edited out of the classroom. Governments cannot promote inter-religious harmony while at the same time embracing a totally secular agenda. In other words, *it is pointless to preach against racism, anti-Semitism, and religious intolerance while simultaneously undermining that essential*

¹² On this point COMECE has made the position of the Catholic Church very clear in n. 35 of the aforementioned document (see note 10):

At the very heart of our faith experience, we find an invitation to dialogue with others. This dialogue is not external to our commitment to faith. It is an intrinsic part of faith, because we discover that we are all part of the same humanity created by God and saved by the irrevocable gift of the return of the Son. For our Christian conscience, there cannot be any contradiction a priori between our faith-based commitment, our will to live in a fraternal dialogue with those who do not share our religious convictions and our concern to contribute to the good of all humanity.

ingredient which could go a long way towards eradicating such threats, namely religious education, within the public domain. It is precisely when children are allowed to celebrate with their peers, within an educational environment, those feasts that lie at the heart of their respective religious communities that they grow up loving and respecting each other's religious differences. It is when children learn about each other's religious affiliations that they also learn to respect each other and grow into responsible and tolerant adults. If we uphold Aristotle's definition of education as *induction into society*, we might well maintain that *religious education is the best form of induction into a multi-religious society*. Learning about and sharing the riches of each religious community could yet become the best way forward for promoting religious tolerance and progress.

Conclusion

A pluralistic society requires communities where the individual feels that his/her values are being safeguarded and handed down to the next generation, together with an over-arching sense of national community where different groups take an active part in their quest for the common good. Only in this manner can society become truly a community of communities.

The transformation of the social landscape of the European continent appears to be proceeding hand in hand with religious resurgence as well as with increasing religious diversity. It is true that religion has today become a battleground among diverse understandings of the human person, God, this earth, and the relation between the three. But even underneath these conflicts we are witnessing a common endeavour which indicates a spiritual hunger that cannot be eliminated from society. We see these forces resurfacing in those countries where, for several generations, powerful counter-forces attempted to suppress them. These are indications that we are not living and can never live in a totally secularized culture; on the contrary, a new form of religious culture is evolving.

Our European culture will not be less religious nor will it be more secular. It will be one that is deeply spiritual, although of a religious sentiment that has encountered the scientific discoveries and progress that are characteristic of our age and has weighed up both their dangers as well as their benefits. A serious and considered approach to this phenomenon will go a long way towards fulfilling one of the lofty ideals proposed by the founding fathers of the European Union as enshrined in the Schuman Declaration, namely an enhanced European solidarity.¹³

¹³ "Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity." Schuman Declaration, 9 May 1950.

FAMILY RIGHTS - A CATHOLIC PERSPECTIVE

Rev. Prof. GEORGE GRIMA

The *Universal Declaration of Human Rights* affirms the right of every man and woman to marry and found a family (art. 16.1), specifying that marriage requires free and full consent on the part of the intending spouses (art.16.2) and recognizing that the family is entitled to the protection of society and the State as the natural and fundamental unit of society (art.16.3). This article links quite clearly the freedom of the individual man and woman to marry and found a family with the obligation of society and the State to protect the family. The family requires the protection of society and the State, because it is fragile, vulnerable and limited in what it can provide for its individual members and yet it is crucial for the development of both the individual and society.

What kind of protection society and the State should give to the family is difficult to say, as circumstances change and create new needs. Marriage and family life have always implied a certain element of risk. Ulrich Beck has been among the first thinkers in recent years to conceptualize social life in post-modernity, including marriage and the family, from the perspective of the chronic risks being generated, sometimes imperceptibly but still serious in the long-term.¹ As any other sphere of life, marriage and the family look as if they are in a state of a permanent crisis. While the institutional aspects of marriage and the family are getting weaker, the internal and external pressures are intensifying, especially through their interaction with each other. Relationships between man and woman are changing, involving a profound transformation of intimacy. What counts is not so much marriage as a bond between man and woman and as a source of mutual rights and obligations as the quality of the relationship. If the relationship fails to deliver for both spouses or even for one of the spouses, marriage is likely to break down. The no-fault provision followed by several courts today in separation or divorce cases is sanctioning a growing tendency of freely disengaging from any commitment and obligations one may have assumed.

It seems that we are moving toward increasing de-institutionalization of the family. The trend is to delay marriage and parenthood, to cohabit before marriage or instead of marrying; marriage instability and births outside marriage are on the increase. The shift

¹ Cf. Ulrich Beck, *Risk Society Towards a New Modernity*, trans. by Mark Ritter, London: Sage Publications, 1992, especially pp.103 - 126; Ulrich Beck and Elizabeth Beck-Gernsheim, *Individualization* London, Sage Publications, pp. 85 - 128.

from marriage to the relationship within marriage seems to be taking another step, namely, to what Anthony Giddens calls *pure relationship* or relationship for which marriage is superfluous, as it depends on how far it is satisfying to the couple and how much commitment the couple is willing to invest in it.²

But parallel to this movement toward de-institutionalization, there is another movement demanding that the notion of the family should be extended to include so-called new family forms. In removing the difference between children born within and outside marriage, the law is placing cohabiting couples with children one step nearer the traditional family. This has not been a controversial matter at all at least in Western countries, since it has been socially perceived as a justifiable and a necessary measure to take in the interest of democracy. Other measures, however, are being hotly discussed in public today in relation to the demands of cohabiting couples for the legal recognition of their relationship. The issue over gay marriages can also be interpreted as another indication that people are not actually moving away from institutions, including marriage, but are turning toward some form of institutionalization and, therefore, toward some kind of public recognition of what would otherwise be only a purely private relationship.

What one side is seeing as a de-institutionalization of the family (which some are interpreting - and not without reason - as having a disruptive effect on the family) the other is seeing may be as just “a phase of reconsidering what should be included in the family”.³ The argument against extending the notion of the family to include within it those forms of relationships, from which the family has been traditionally distinguished, is basically that such an extension would empty the notion of marriage and the family of their proper significance and value. There is certainly a point in this way of arguing, as the change in this case is meant to have serious and far-reaching implications in practice. The debate over this issue is so passionate, because what is being advocated affects the way we have been thinking about and dealing with the family as the natural and fundamental unit of society. In fact, I would be assuming that while society and the State are responsible for the well-being of everyone, irrespective of one’s situation, including marital status, the family as a life-long union between male and female, that is founded on marriage and is open to the transmission of life, has a particular claim to the protection of society and the State.

As the basic unit of society, the family is not just another sphere of life. It has a foundational role to play for the well-being of every person. In laying claim to the respective protection of society and the State, the family is actually affirming its right to be itself and to be in a position to realize its potential.

² Cf. Anthony Giddens, *The Transformation of Intimacy*, Oxford: Polity, 1993. In his lecture on the family, given as part of his Reith Lectures 1999 under the general title: *Runaway World*, Giddens says: “Today the couple, married or unmarried, is the core of what the family is”.

³ The European Foundation for the Improvement of Living and Working Conditions interprets the changes through which the family is currently passing not so much as changes toward de-institutionalization as changes toward an extended notion of the family. Cf. First European Quality of life Survey: *Families, Work and Social Networks*, Luxembourg: Office for Official Publications of the European Communities, 2005, p.1.

The central point behind the Catholic concept of family rights is that the family is not an object but a subject. The purpose of social and State protection is to enable the family to become self-reliant, even if it can never attain self-sufficiency. The fact that a religious institution is not only endorsing but it is actually advocating the idea of family rights is quite significant at a time in which we are rediscovering the importance of civil society. One may find the Catholic proposal thicker than what one would expect it to be in a culturally and religiously pluralistic world. But how the Catholic Church is actually trying to combine human rights talk with its theology of marriage and the family can be taken as a case-study to illustrate the way in which one of the major world religions is seeking to defend and promote an institution which is important and dear to so many people, irrespective of their particular moral and religious beliefs.

Following some preliminary remarks on the Catholic understanding of human rights discourse, I shall explain the position of the Church on the exercise of human rights within the family as well as the kind of protection that society should give to the family, restricting myself to the place of the family within civil society. This would exclude the relation of the family to the economic sector where the family is facing serious challenges in different ways especially those relating to the reconciliation of work, possibly for both spouses, with family commitments, adequate wages or salaries and, above all, the impact of an exchange mentality (giving x for y) characteristic of economic relationships. These issues are too broad, as are actually those concerning the relation of the family to the State, to be discussed within the limits of this paper.

Catholic Human Rights Discourse

The cultural diversity and religious pluralism characteristic of life in modern and post-modern societies, would not privilege any particular voice, whatever its weight might have been in the past. This is the reason why the Church is finding the language of human rights a useful instrument through which it can articulate its social ministry in the public domain.⁴ The use of human rights discourse can help a religious institution to ensure a hearing outside its own particular community and tradition.⁵ These rights stand for claims which everyone is entitled to make irrespective of the community or tradition to which one belongs. But they can only be fully grasped in the context of culture and tradition.⁶

⁴ For a collection of Catholic Human Rights documents, see Giorgio Filibeck, *Human Rights in the Teaching of the Church: from John XXIII to John Paul II*, Vatican City, 1994. For a study of the Catholic human rights tradition see David Hollenbach: *Claims in Conflict*, New York: Paulist Press, and Jean-Francois Six, *Church and Human Rights*, trans. by Susan Leslie, Middlegreen and Mansooth; St Paul Publications, 1992.

⁵ The World Council of Churches has been promoting the defence and promotion of human rights especially through the Commission of the Churches on International Affairs. A compilation of reports by this Commission from October 1994 to June 1998 is published as *Human Rights and the Churches: New Challenges*, ed. by Clement John, 1998. For human rights in Christian, Jewish and Islamic traditions, see *Religious Human Rights in Global Perspective: Religious Aspects* and its companion volume, *Religious Human Rights in Global Perspective: Legal Aspects* ed. by John Witte, Jr. and Johan D. van der Vyver, The Hague, Boston, London: Martinus Nijhoff Publishers, 1996.

⁶ For a discussion of this point see Michael J. Himes and Kenneth R. Himes, OFM, *Fullness of Faith: The Public Significance of Theology*, New York: Paulist Press, 1993, pp. 1-27, 55-73.

We all think from within a tradition. Traditions, whether secular or religious, can maintain their vitality, if they keep the argument which they embody open to new ways of conceptualizing reality⁷. One would be oversimplifying the case if the change in attitude on the part of the Catholic Church to the modern human rights tradition were to be described as a change from rejection to acceptance. The case has been rather one of critical appropriation. While acknowledging that the modern language of human dignity and human rights, articulated around the values of freedom, equality and brotherhood, is one of the fundamental assets that humanity has developed, it maintains that a critical attitude is nonetheless important to discern what notion of selfhood is implied in different versions of human rights.

The right of the self to recognition by the other in the context of both interpersonal relationships and relationships in the broader society of human beings is basic in any system of human rights. But in and by itself this right would not guarantee that the individual can develop a truly human self-identity. Our individual identity is our identity as men or women, as husbands or wives, as fathers or mothers, as sons or daughters, as people having responsibilities for each other and for our common good. It is essential to affirm ourselves as being both distinct from and related to each other. It is the relation of the self to the other that is often elided in a one-dimensional understanding of the right to be oneself and to live a life of one's own.⁸ The Catholic Church, like other Christian churches, reads and interprets the modern history of human rights in the perspective of a relational view of the self.

In *Pacem in Terris*, which is the first major encyclical on human rights, written by Pope John XXIII in 1962, the moral and juridical dimension of the self in relation to the other is brought out by correlating each fundamental right to a corresponding obligation. The obligations would be those arising out of our individual and collective responsibilities for each other. In the absence of an ethic of responsibility, it would not be possible for anyone to enjoy true and full respect of his or her own fundamental rights. Yet the concept of obligation, however essential, is not primary in the Catholic view of human rights. What is primary is the human being who is called to realize himself or herself in freedom. It is true that this is not a call to a freedom that recognizes no limits to what one may do. In fact, the exercise of human rights does require the cultivation and maintenance of social structures of living that are conducive to the development of each and every person in all the dimensions of his or her personality. The mediating role of these structures is precisely one of the central points made by the Church in its interpretation of the significance of the family for an adequate understanding and implementation of human rights.⁹

⁷ Alistaire Macintyre defines a living tradition as “a historically extended, socially embodied argument, and an argument precisely in part about the goods which constitute that tradition” *After Virtue: A Study in moral theory*, second edition, London: Duckworth, 1985, p.222.

⁸ On the relation of rights and responsibilities in a philosophical perspective see Arthur J. Dyck, *Rethinking Rights and Responsibilities: The Moral Bonds of Community*, Cleveland: Pilgrim Press, 1994. On the evolution of an individualistic interpretation of human rights, focusing on what the author calls “the lone rights bearer”, in the North American context, see Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse*, New York: The Free Press, 1991.

⁹ John A Coleman has studied the role of mediating structures for an adequate understanding and the proper exercise of the right to religious freedom. Cf. *An American Strategic Theology* New York: Paulist Press, 1982, pp 209-233.

Rights within the Family

The initial proposal for the elaboration of a *Charter of Family Rights* was made in the context of a major Papal document on the family following one month of discussions and deliberations at a synod of Bishops from all over the world on the mission of the family today. In this document, known as *Familiaris Consortio*,¹⁰ John Paul II considers the question of human rights first in connection with the family in itself and then in connection with the family in its relation to society and the State.¹¹ The proposal about a *Charter of Family Rights* occurs in the context of the latter set of considerations. It was motivated, at least in part, by the concern of the Church to defend the rights of the family openly and strongly “against the intolerable usurpations of society and the State”¹² (which was quite a legitimate concern especially at the time when the family had to face not only an individualism that corrodes the family from within but also totalitarian regimes that prevent the family from exercising its legitimate freedom). The objective was to specify the *protection* due to the family in terms of *rights* on the part of the family and *duties* on the part of society and the State.

*The Charter of Family Rights*¹³ should be read together with what the post-synodal document says about the respect which the individual members should enjoy within the family itself. The emphasis on the family as a place where the rights of all its members are truly respected is important, particularly in view of a current prejudice against the suitability of traditional institutions, especially marriage and the family, to actually protect and promote gender equality. Surely, the traditional view of marriage and the family carried a gender bias in the distribution of authority and in the division of labour which has become untenable in a world marked by an increasingly stronger sense of gender equality and democratic forms of living in all spheres of life, including and perhaps even more so in marriage and the family.

It is important, however, to qualify at this stage the notion of the family as a rights-based institution. In fact, the nature of the family presupposes a way of life in which the rights of all its members are respected. But this notion of the family, however essential, does not reflect fully the meaning of the family. The deeper aspiration of a man and a woman getting married and having children is to form together “a community of life and love”. In the Christian tradition, this aspiration is not only validated but also given, as it were, a further warrant, by seeing it as a response to God whose nature and life is one of self-giving. The

¹⁰ John Paul II, Apostolic Exhortation, *Familiaris Consortio* 1981.

¹¹ Human rights within the family and family rights are treated in *Familiaris Consortio* in nos. 22-41 and in nos 42-46 respectively. John Paul II returned to the subject of family rights in his *Letter to Families*, published in 1994 which the United Nations Organization declared as the year of the Family.

¹² *Familiaris Consortio*, 46.

¹³ *The Charter*, consisting of 12 articles, was published by the Holy See in 1983.

first task of the family is precisely to form itself into “a community of persons”. This expression is chosen explicitly to bring and keep together the two essential aspects of our social life, namely, ourselves as being distinct from and, at the same time, as existing in fellowship with each other. This dual aspect is already reflected in the notion of justice (which constitutes the basis of human rights discourse) in so far as the distinction between the self and the other which justice presupposes keeps our life together from destroying our individual personality.

In its reflection on the fundamental task and mission of the family to become a community of persons, the post-synodal document on the family underlines “the equal dignity and responsibility of women and men”.¹⁴ It states that “one cannot but observe that in the specific area of family life a widespread social and cultural tradition has considered women’s role to be exclusively that of wife and mother, without adequate access to public functions which have generally been reserved for men”. In response, the document makes two points. On the one hand, it confirms that “the equal dignity and responsibility of men and women fully justifies women’s access to public functions”.¹⁵ On the other hand, it affirms that “the true advancement of women requires that clear recognition be given to the value of their maternal and family role, by comparison with all other public roles and all other professions”.¹⁶

This way of understanding gender equality within the family may seem not to be altogether satisfactory in that it may suggest that in exercising their maternal and family role, women have the opportunity of advancing themselves and that their access to other public roles and other professions is not essential or that important. But this is not what the post-synodal document is actually saying. In fact, it speaks of the obligation of husband and wife to participate as fully as possible in the work required at home, especially in the rearing and education of children. Its concern lies particularly in fighting a current social and cultural prejudice against household and family work. What is required, in the first place, is a new culture or a change of mentality that would recognize the original and irreplaceable meaning of work in the home, particularly that related to the rearing and education of children. This change can come, at least partly, through appropriate measures, taken as part of a family policy, that would recognize the value of work in the home and promote it (e.g. through payment for such work and/or flexible work outside the home).

John Paul II speaks not so much about the rights as about the obligations of men as husbands and fathers.¹⁷ Returning to the notion of conjugal love (which would express the fulfilment of the relationship between the couple), he explains that such love presupposes

¹⁴ *Familiaris Consortio*, 23.

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ *ibid.*, 25.

¹⁸ The reference is to St. Ambrose, *Exameron*, V 7, 19: CSEL 32, I, 154.

and requires that a man should have a deep respect for the equal dignity of his wife, referring to a quote from St Ambrose, a fourth century Christian author: “You are not her master but her husband; she was not given to you to be your slave, but your wife...Reciprocate her attentiveness to you and be grateful to her for her love”.¹⁸ Evidently reflecting its concern about the growing absence of fathers from their respective families, he also affirms that “the place and task of the father in and for the family is of unique and irreplaceable importance” and observes that “the absence of a father causes psychological and moral imbalance and notable difficulties in family relationships, as does, in contrary circumstances, the oppressive presence of a father...”.¹⁹

The emphasis which the Church is placing on marital relationship as a love relationship, unfolding in a framework of rights and duties, is very important, as it qualifies significantly the notion of love as self-sacrifice.²⁰ Marital love is to be understood, minimally at least, as mutuality or equal regard, following the golden rule, which both Jewish and Christian sources consider to be the summation of the entire moral law, namely, “to treat others as you would like them to treat you”. This is a very timely reminder in view of the importance which self-esteem and self-respect have rightly gained in the consciousness of people today. A life lived for others rather than oneself has become quite a controversial moral ideal. In itself this ‘individualism’ is already placing life in marriage and the family under severe strain, as it is incompatible with a life of self-giving and difficult to reconcile with life-long commitment to a common purpose. Yet the kind of self-giving required from the spouses should be mutual and should sustain each other’s sense of equal dignity.

Self-giving is what nourishes the formation of a community of persons within marriage and the family. But it is not some sort of religious ideology to hide conflict within the marital relationship and much less to trap the victims of domestic violence in degrading and oppressive situations. Equality and mutual respect are always presupposed as there can be no love without justice. Nevertheless, human reality, being what it is, calls for moral and spiritual resources that go beyond strict justice to sustain and regenerate, when necessary, the will to accept and embrace the other in love. In other words, life in marriage and the family involves the exercise of rights, as a continuing task, but it would not be sustainable in the long run, if it were not all the time open to reconciliation, which would be impossible without a great spirit of sacrifice. This thought is put beautifully by Jon Paul II in the post-synodal document in these words:

“Family communion can only be preserved and perfected through a great spirit of sacrifice. It requires, in fact, a ready and generous openness of each and all to understanding, to forbearance, to pardon, to reconciliation. There is no family that does not know how selfishness, discord, tension and conflict violently attack and at times morally wound its own communion: hence there arise the many and

¹⁹ *Familiaris Consortio*, 25.

²⁰ For a discussion on marital love as mutuality and self-sacrifice, see Don S. Browning et al, *From Culture Wars to Common Ground*, second edition, Louisville: Westminster John Knox Press, 2000, pp. 271-305.

²¹ *Familiaris Consortio*, 21.

varied forms of division in family life. But, at the same time, every family is called by the God of peace to have the joyous and renewing experience of “reconciliation,” that is, communion reestablished, unity restored”.²¹

The definition of the family as a community of persons holds for the nuclear as well as for the extended family. Again proceeding on the basis of love as the animating principle of life within the family, one can never describe fully and in all its richness the care which the family is called to show for its children and the elderly. The claims that children have as members of their respective families and society in general can only be minimally articulated in terms of rights. Yet the articulation of these rights on the international level, initially in the form of a Declaration and eventually in the form of a Convention requiring certain specific measures from the States signing it, has important implications especially for the family. In fact, the child is potentially at great risk in its own family, even if by and large children actually receive the care that they need in their respective families.

The post-synodal document speaks in general terms about the role of the family in the promotion of children’s rights.²² But the terms are chosen specifically to convey the sense of almost unbounded care which the family is called to show for its children: “In the family, which is a community of persons, special attention must be devoted to the children by developing a profound esteem for their personal dignity, and a great respect and generous concern for their rights”. The so-called option for the poor or for the weaker applies in particular to the child. In fact, such esteem and concern become “all the more urgent the smaller the child and the more it is in need of everything, when it is sick, suffering or handicapped.”²³

In the section on the mission of the family in the transmission of life the focus is more on responsible parenthood than on the complex and thorny question of the respect due to the right of the child to life in the course of its development from the moment of conception to birth. This question has been considered explicitly by the Congregation of the Doctrine of Faith in a later document.²⁴ It cannot be taken up in the context of the present paper, given its complexity. One may just point out that in the *Charter of Family Rights* there are two out of twelve articles that deal with the matter and these refer mainly to the obligation of the State to protect the life of the child in its mother’s womb but, understandably enough they affirm also and in particular the responsibility of the parents in this regard. It is relevant also to point out that, according to a long-standing tradition within the Church (which is reaffirmed in the post-synodal document on the family), giving birth to a child carries with it

²² *ibid.*, 26.

²³ *ibid.*

²⁴ Cf. The Instruction *Donum Vitae*, 1987.

²⁵ Responsible parenthood and parental rights and duties regarding education are considered in *Familiaris Consortio*, 28-41.

the responsibility of education, the parents being the first and foremost educators of their children.²⁵

Families that could find a place for the elderly and recognize the active and responsible role that they can play in the (extended) family would give a very important counter - witness in certain cultures. How the elderly can remain integrated within the family is evidently a big problem not only because families have assumed new burdens and are often not in a position to look after their elderly parents but also because conditions of work in modern and late modern societies require mobility and are making the maintenance of contact between members of the extended family, physically at least, increasingly more difficult. But an appropriate family policy should recognize that the elderly can be a particularly significant asset for the development of the family into a community of persons that can serve to bridge one generation with another.²⁶

I have spoken on the rights within the family, because they are very important to keep in mind when talking of the family as a community. While the rights of the various members composing the family (husband and wife, parents and children) can give rise to a certain tension and even conflict due to the difficulty of harmonizing the rights of one with those of the other, they are an essential condition for the family to become and remain a true community of persons. The unity that such community implies is based on the recognition that the other is distinct from myself and should command my full respect. The family, however, is a totality and as such is itself a subject of rights. When we speak of family disruption, families in crisis, suffering or poor families, we are speaking of the family as a whole that requires interventions that would protect the family as such.

At this stage, I come to the second central point in this paper on family rights, namely, the rights which the family can invoke in its relation to society and the State. As part of its family ministry, the Holy See has elaborated, as I have already noted, a *Charter of Family Rights* which a group of experts, at the invitation of the Pontifical Council for the Family, has recently studied with reference to the *Universal Declaration of Human Rights*.²⁷ Situating a religious human rights document into a secular framework which is surely a very fitting one in view of its authoritative nature is precisely the kind of mediation or bridging that religious institutions should try to find or to make in order to develop a meaningful position in the public domain. As I have already indicated, I shall be limiting myself to the relation of the family to society.

²⁶ *ibid.*, 27.

²⁷ The Pontifical Council for the Family commemorated the fiftieth anniversary of the *Universal Declaration of Human Rights* through several meetings, one with a group of experts (December 14-16, 1998, another with European Politicians and Lawmakers (October 22-24, 1998) and another with Politicians and Lawmakers of America in Buenos Aires (August 3-5, 1999). The main document consulted for the present paper is the one containing the reflections of the expert group on *Human Rights and Rights of the Family*, LEV, 1999.

²⁸ Cf. Vatican II, *Gaudium et Spes*, 27.

Family Rights and Society

The Catholic concept of family rights acknowledges the primacy of the person in relation to society, including the family itself. This is also one of the underlying principles of the *Universal Declaration of Human Rights*. The principle that every person has his or her own inherent dignity provides an indispensable key for the understanding of the nature of society. It is a basic social principle as it alone can guarantee that everyone counts and deserves reverence. The concept of *reverence*,²⁸ which the Church uses to indicate the kind of attitude we are called to show to each other, is a much richer concept than the conventional term *respect*, even if this latter term is an appropriate term in a moral-juridical framework. Reverence is usually used for God. It is extended to the human person to show that the attitude to the human being should reflect almost the sense of awe in the presence of someone who cannot be fully comprehended and remains a mystery even to himself or herself.

The relation of the individual to society involves a continuing struggle for recognition. While this should not be construed as a justification for an adversarial account of social relationships (as some argue, taking gender relationships as a paradigm case), the struggle for recognition remains an essential feature of social life, as it constitutes precisely the social dynamic to ensure the priority of the human person over particular social arrangements. In the words of Vatican II, “The beginning, the subject and the goal of all social institutions is and must be the human person, which for its part and by its very nature stands completely in need of social life”.²⁹ One may observe that by “institution” what seems to be understood here is what Paul Ricoeur calls “the structure of *living together*”.³⁰ This is a structure that is not reducible to interpersonal relationships, as the other in whose presence we are calls for a kind of concern or, as Ricoeur says, solicitude, which the language of rights and duties cannot fully articulate and express. Yet such (i.e. interpersonal) relationships presuppose a structure of living together which can guarantee that each and everyone actually receives his or her due esteem and respect.

The Catholic view of family rights presupposes also the priority of the family in relation to other institutions. This too is in line with the way in which the *Universal Declaration of Human Rights* considers the family. The *Declaration*, as I have already observed, describes the family as *the natural and fundamental unit of society*. It situates the family in the context of civil and political rights as well as economic, social and cultural rights.

Article 16 is central. It declares the right to marriage and to found a family to be a fundamental civil right. In exercising this right one is not merely making a choice, which in itself is an act of freedom, but one is also initiating something, in association and in full agreement with another, which is really important for the couple, for the children that may be born out of this union and for society itself. Marriage and the family are indeed

²⁹ *ibid.*, 25. This principle goes back to Aquinas. Cf. *I, Ethica, Lect. I*.

³⁰ Cf. Paul Ricoeur, *Oneself as Another*, trans. by Kathleen Blamey, Chicago and London: The University of Chicago, Press, p.194.

institutions which society provides for a man and a woman to structure their life together in a certain way. But what they institutionalize in the first place is freedom. In marrying and founding a family, a man and a woman should be free from any outside interference and they are entitled to their private marital and family life. This gives the family an autonomy or sovereignty which society should recognize and respect in the interest of its members. In fact, article 12 prohibits arbitrary interference with one's privacy, family, home or correspondence.

The family figures also in the context of economic, social and cultural rights. The *Declaration* affirms everyone's right to just and favourable remuneration for work, ensuring for himself and his *family* an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection (art. 23.3), the right to an adequate standard of living and security for oneself and one's *family, motherhood and childhood* being entitled to special care and assistance (art. 25) and the prior right of *parents* to choose the kind of education that shall be given to their children (art.26.3).

These references show clearly that the family is recognized as a unique mediating institution in and through which each and every one can exercise one's fundamental rights.

The *Charter of Family Rights*, adopted by the Holy See, elaborates on something which seems to be implicit in the *Universal Declaration of Human Rights*. This is that the family needs to assume a proactive posture in society today perhaps more than it used to do in the past. Recognizing the family as a subject of rights means recognizing that families are not merely an object of protection or care but they are a subject or a protagonist capable of taking the initiative and setting the agenda on what they consider to be matters of real importance and concern in their regard and in regard to society in general.

The *Charter* consists of twelve articles. Some recall juridically binding norms, while others express fundamental postulates and principles for implementation through legislation and for development through family policy. At the same time, they provide a platform and a programme for social action on the part of the families and other groups, organizations and movements within society. The social import of the Catholic view of family rights can be understood better in the light of its distinction between society and the State. This is, in fact, the third point of convergence between the *Universal Declaration of Human Rights* and the Catholic understanding of human rights, including the rights of the family.

The philosophy behind the *Declaration*, which anchors the different fundamental rights in the inherent dignity of the human person and makes the realization of every human being in all aspects of his or her personality the finality of these rights, presupposes a clear distinction between society and the State. The State is, of course, an essential social institution and has an indispensable role to play, through its coercive power, in the creation of appropriate conditions for people to be able to take initiative and sustain it, alone or in association with others, to cooperate in order to respond better to matters of common concern and in general to live in freedom, security and peace. This explains why the promotion of family rights, on the part of the Catholic church, is addressed also to lawmakers. But the notion of the State is not co-extensive with that of society, society being a broader concept covering the life of people in marriage and the family, in friendship or

association with each other, and in other sectors of life such as those of economics and culture.

In recent years a further distinction has been drawn between society in its broader sense and civil society. As it is generally understood, the term *civil society* denotes “those forms of communal and associational life which are organized neither by self-interest of the market nor by the coercive potential of the state”.³¹ As the basis of these associations lies in freedom, civil society stands for the voluntary sector and incorporates a wide range of voluntary groupings and organizations. As the motivation is not personal gain or self-interest, these associations constitute an important resource for the promotion of community living. The literature on the subject suggests several ways in which a healthy and vibrant civil society can improve our life together.

One perspective, which is particularly relevant to the topic, looks at civil society as a generator of what has been called “social capital”.³² This expression designates a conceptual framework for the analysis of those features of social organization that facilitate cooperation for mutual benefit such as friendship networks, social trust and loyalty to a worthwhile cause. This is another form of wealth. It was introduced as an extension of the notion of “human capital”, which was coined to acknowledge that the most important asset that society can have are its people. The chances of society to improve lie in how much and what kind of investment it is in a position to make in its people by way of suitable education, skills and health care and other appropriate measures. Social capital refers to the resources generated through social networks, emerging as part of a variety of forms of interaction and traditions animating civil society. These resources are very useful for the development of human capital. Besides material capital, society needs human and social capital. The term “capital,” can evidently be used in these three different contexts in an analogical sense. The only element they seem to share in common is the idea of resourcefulness or productivity. “Like other forms of capital,” James Coleman says, “social capital is productive, making possible the achievement of certain ends that would not be attainable in its absence.”³³

The driving force behind the variety of initiatives adopted and projects or work carried out by so many voluntary organizations on behalf of society is the extensive trust their members put in one another and the ongoing commitment they show to a common ideal. It is because trust would generate trust and loyalty would strengthen loyalty that social capital develops. Civil society has received a new impetus in the context of a global society. We are becoming increasingly aware that local problems have a regional and even a global

³¹ A Wolfe, *One Nation after all*, New York: Viking, 1998, p. 9 as quoted in *Social Capital - Producing the Common Good*, ed. by Corwin Smidt, Texas: Baylor University Press, 2003, p.3.

³² James S. Coleman, *Foundations of Social Theory*, Cambridge, M. A. Harvard University Press, 1990; For a discussion on the ways in which religion as part of civil society can generate social capital, see Corwin Smidt ed. op.cit. Brian Stilner, *Religion and the Common Good: Catholic Contributions To building Community in a Liberal Society*, New York, Oxford: Rowan and Littlefield, 1999; David Fergusson, *Church State and Civil Society*, Cambridge: Cambridge University Press, 2004.

³³ James S. Coleman, *Foundations of Social Theory*, p. 302 as quoted by Corwin Smidt, op.cit., p 4.

³⁴ Jürgen Habermas, *Between Facts and Norms*, paperback edition, Cambridge: Policy, 1997, p.371.

dimension. With the help of present-day information technology, civil society is beginning to operate across national borders by forming a very broad range of networking, often on the basis of strategic alliances.

The input that individuals, groups, organizations, families and movements can give especially by working in association with each other for the improvement of economic, social and cultural conditions would become particularly effective when it is appropriated by the organs of the State. In the words of Jurgen Habermas, "... public influence is transformed into communicative power only after it passes through the filters of institutionalization *procedures* of democratic opinion - and will-formation and enters through parliamentary debates into legitimate lawmaking".³⁴ Following a quite significant line of thinking about civil society,³⁵ Habermas is focusing on the crucial role of civil society as a bridge between the private and the public sphere. Our experience is initially as children, husbands and wives, parents, students, workers, consumers and clients of various forms of public services. Our experience, unfolds originally in the private sphere and the problems it entails may need intervention at the public level sometimes in the form of new initiatives as part of public policy. Civil society, acting through various movements and organizations, including the churches, can mediate usefully between our private experiences, which are sometimes difficult and even painful, and the kind of action required on the public level to address the particular and concrete needs of people. This is the reason why Habermas argues that the public influence that an active civil society is capable of exerting can only be transformed into communicative power, after it passes through parliamentary debate and the appropriate legislative measures are adopted.

Habermas' perspective is important. While recognizing the contribution which civil society can give to the formation of social capital in terms of the promotion of mutual trust and welfare support, it considers also the importance of appropriate intervention on the part of the State.

How does the family fit into a society in which one of the best kind of protection it can provide to its members is by promoting the generation of social capital? I think that a helpful way of conceptualizing the family in a society which is gradually rediscovering the importance of social capital, is precisely to think of the relation of the family to society in terms of family rights. Let me explain this point in a general way, taking the *Charter of Family Rights* as a point of reference.

The articles forming part of the *Charter* focus on the right of the family to exist and to progress as a family (art. 6). In so far as it is based on marriage (art. 1 and 2), it presupposes the basic ingredients of social capital, namely a co-operative project between a man and a woman, nourished continuously by mutual trust and maintained through life-long commitment, for the joint development of a community of life and love. Responsible openness to life (art.3 and 4) and direct involvement in the rearing and education of children (art.5) constitute the richest and the most original way in which social capital can regenerate

³⁵ Cf. J.L. Cohen and Arato, *Civil Society and Political Theory*, Cambridge, Mass. 1992.

itself and be productive. Social capital can grow through social interaction. The interaction of the family with a religious community can be extremely fruitful for its moral and religious regeneration and hence the right of every family to live its own domestic religious life, under the guidance of the parents (art. 7). The parents' original and primary right to educate their children (art. 5) should be the basis of cooperative links between the family and schools or other educational institutions. Families associating with each other and with other institutions as well as their participation through these associations in the planning and development of programmes touching on family life (art. 8) is another vital way of activating the family as a subject.

The rights corresponding to these aspects of family life, however, are not enough to empower families to participate in the production of social capital. Families require also the support of an adequate family policy (art. 9), social and economic arrangements enabling the reconciliation of work and family commitments and providing enough income, from work or other social measures, to establish and maintain a family (art. 10) and a suitable physical environment, hence decent housing (art.11). Given that families are sometimes on the move, migrant families should suffer no discrimination in the sense that families of immigrants are entitled to respect for their respective culture and to be assisted to integrate themselves into the community, and emigrant workers have the right to see their family united (art. 12).

As understood by the Catholic Church, the family can exercise meaningfully its own legitimate rights in the light of two fundamental ethical principles: solidarity and subsidiarity.

Solidarity is the ethic for living in an interdependent world.³⁶ Solidarity lives on and is nourished by a sense of fellow feeling. But the emotional element needs to be educated by constantly asking and trying to find an adequate, even if difficult, answer to a quite simple and yet intriguing question: "Who is my neighbour?" The ethic of solidarity is the ethic of an inclusive society. Inclusion means questioning social situations in which people are being deprived of their fundamental right to participate. Gender and racial discrimination are certainly very sensitive and crucial areas to take into account, even if they remain so complex to understand and change. Other areas relating to international and intergenerational justice are also a big challenge to human conscience. An ethic of solidarity follows from a relational view of the self which, as I have noted, is a postulate of an adequate theory of human rights.

Precisely because human rights, including those of the family, have a universal dimension, their defence and promotion constitute a matter of common concern and are an integral part of the common good. A problem which has been engaging public discussion for quite a long time and to which there is certainly no easy and simple answer concerns the possibility of reaching consensus in a world marked by conflicting views even on matters of common concern. Some claim that the right to marry and found a family involves the obligation of

³⁶ The principle of solidarity is explained in several Catholic social documents, especially in John Paul II's encyclical, *Sollicitudo Rei Socialis*, 1987. For commentaries on this encyclical see *The Logic of Solidarity*, ed. by Gregory Baum and Robert Ellsberg, Maryknoll, New York: Orbis Books, 1989.

society, and primarily the State, to take preventive measures to preserve the stability of marriage and the family. The argument against divorce is generally formulated along these lines, namely, that it would undermine marriage and the family. But there is evidently far from any consensus on this point. On the contrary, the counter-argument usually takes the form of a claim to the right to re-marry. The debate on abortion has brought up a series of even more complicated issues. In America it was legalized on the ground that the State has no right to interfere with the mother's right over her pregnant body, as this is a private matter. The debate has recently taken another still very controversial turn with the promotion, especially at the international level, of what have been described as "reproductive rights". According to one very influential line of thinking, these rights should include the right of access (possibly as part of a comprehensive health care service) not only to contraceptive means and sterilization but also to abortion as part of the right of women over their reproductive system.³⁷

Understandably enough, these are socially still highly divisive issues. In what sense can the virtue of solidarity be useful as a virtue empowering people to remain engaged in argument, however divided they may be over such important matters of common concern? David Hollenbach suggests that solidarity can be practiced in a socially more productive way, if it is understood in the sense of *intellectual solidarity*.³⁸ What we may hope to achieve from this suggestion is a change of attitude rather than a clearly defined answer to a complex problem. But this would already be quite a significant achievement, as it could release fresh moral and religious resources. A change of attitude involves a new way of thinking. Rather than thinking in terms of "coexistence in parallel worlds," we can learn, through intellectual solidarity, to think in terms of a world of "mutual cooperation, interaction and interdependence".³⁹ Openness to each other's views and convictions should strengthen rather than weaken our self-identity, as it involves taking our individual ways of thinking more seriously by exploring their foundation in faith as well as in reason through discussion and argument with people of different persuasion.

There is another aspect of solidarity which is also related to the universalistic dimension of human rights, including family rights. Solidarity within the family is already problematic, as the tension between husband and wife as well as between parents and children, repeatedly confirms, sometimes even in tragic ways. But at least within the family there is a kinship relationship that can give depth and stability to family relationships. Solidarity extending beyond one's kin needs deeper motivations to generate and sustain it over the years, due to the generally inward-looking pull within the family. The *Universal Declaration of Human Rights* speaks of "the inherent dignity and of the equal and inalienable rights of *all members of the human family*," (Preamble) declaring that "[All] human beings ... should act towards one another in a spirit of brotherhood." (art.1) What kind of moral and spiritual resources

³⁷ This line of thinking has been very pronounced in UN World Population Conferences. Cf. Stanley P. Johnson, *World Population - Turning the Tide Three Decades of Progress*, London, Dordrecht, Boston: Graham & Trotman/Martinus Nijhoff, 1995.

³⁸ Cf. David Hollenbach, *The Common Good & Christian Ethics*, Cambridge University Press, 2002. pp. 137-170.

³⁹ *ibid.*, p.146.

this sort of language can muster in support of brotherly or sisterly forms of human relationships is very hard to say.

It is precisely with respect to the generation of moral and spiritual resources, particularly for the regeneration of the will, through reconciliation, to continue to live and work together in a world torn by conflicting interests and abuse, that religious institutions acquire a vital role as part of civil society. The mediation of these resources through the Christian family, which a long-standing tradition considers to be “a domestic church” underlines the specific contribution which Christian families can make to the development of social capital in their interaction with each other as well as with other families and other organizations in civil society.

Families would be able to have something to share among the members of their immediate family and with the members of the larger family of mankind, as required by the common good, if they are actually capable of developing on their own, as far as possible. What this means is that families function well if they become self-reliant and are in a position to assume and carry out their individual responsibilities. The fact that they cannot do this entirely on their own places them in a vulnerable position. They cannot raise a family in the absence of an adequate income from work. If work is a universal human right and if it has become so important for men as well as for women, work within economic systems should be organized in such a way as to enable men and particularly women to reconcile their family commitments with their right to find suitable work. Parents have an original and primary right to educate their children. Again as in the case of other rights, the exercise of this right depends on the possibilities which parents may or may not have to send their children to a school of their own choice and to participate in school education, especially (but not exclusively) in matters relating to moral and spiritual formation, including sex education. Whatever assistance the spouses and parents may need to fulfill their legitimate rights and obligations, such assistance should promote rather than hinder them from carrying out their family responsibilities in freedom.

The Church formulated the principle of subsidiarity precisely to explain the assistance which not only families but other institutions mediating between the individual and the larger institutions of society such as the State and economic organizations may obviously need in order to function properly. According to this principle, “a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to co-ordinate its activity with the activities of the rest of society, always with a view to the common good”.⁴⁰ The idea is clearly not to create enclaves within society or isolated spaces of individual freedom but to create space for people to be able to live and develop together. This would be the space for individual and collective initiative and action. The notion of “enabling environment” - which has been featuring prominently as a basic element in plans of action and social policy at the international, regional and local levels-is a more suitable term than

⁴⁰ John Paul II, *Centesimus Annus*, 1991, 48. Pius XI defended the freedom of families and intermediate groups and institutions against the threat of totalitarianism on the right and the left of the political spectrum and against the overwhelming power that a neo-capitalist economy was gaining in the 1930's. Cf. *Quadragesimo Anno*, 1931, 184-186. For more recent assessments of the principle of subsidiarity for a theological significance of civil society, theology of the family and family policy see David Fergusson, op. cit., pp. 143 - 155; Don S. Browning, op.cit., pp. 238 - 40, 242 - 245, 310 - 313.

“space” to bring out the full meaning of *subsidiium* or assistance. The principle calls for an environment in which people are able to act alone or in association with others. The empowerment of families involves various forms of assistance on the part of both civil society and the State but this assistance can achieve its own purpose, according to the principle of subsidiarity, if it is actually helping families to exercise their own rights in the economic, social and cultural spheres.

A Concluding Remark

One of the most effective measures that have been taken recently to bring about the required changes in attitude and structures on the social level is to ensure that such concerns as the advancement of women, environmental health and safety and disability issues should be among the primary objectives of plans of action, strategies and public policies, on the international, regional and local levels respectively, across the entire social spectrum. Something analogous is required in the case of family rights. In fact, the initiative taken by the Commission of the Bishops’ Conferences of the European Community through its document “A Family Strategy for the European Union: *An encouragement to make the family an EU priority*” is a step in this direction. It is, however, an initiative which needs further and broader support, especially by movements and associations within civil society, including family associations, to actually become an urgent matter on the public agenda and eventually to lead to the formulation and adoption of a family policy on the level of individual countries that would give the family the priority that it deserves.

THE THEME OF THE FAMILY AS OUTLINED WITHIN THE JUDEO-CHRISTIAN TRADITION

Rev. Dr. FABIO ATTARD SDB

The main outline of this paper follows very simple lines. It will start by exploring the models of family within the Old Testament literature. This will necessarily entail looking into the role that the spiritual experience played in relation to the understanding of family within the people of Israel. Furthermore, it will also deal with the question how a changing cultural milieu, within which the chosen people found themselves, enabled a wider understanding of the family held till then by the same religious tradition without altering, but rather enriching, the same.

At a second stage, a reflection on the writings of the New Testament will shed light on what type of development took place in the understanding of the family, how the previous reflections are in a way presupposed and further enhanced.

The first centuries of Christianity, third part, are crucial to the understanding of the family within the same tradition. Not only has the cultural scenario drastically altered, but there is also the historical development of Christianity from a religion of a refused minority to one where its values and its understanding regarding the family had a wider area of recognition.

1. The Family within the Old Testament

The Old Testament literature is founded on an anthropological substratum, a foundational understanding of the person, that serves as a basis to every single reality where the human person is concerned. Right from the beginning of the book of Genesis, the reflection on creation is one centred around a unique and exclusive relationship between the divine and the human. Considering the mental framework that is characteristic of the Semitic culture, one cannot forget that the primacy of concept is alien to its way of thinking. It is within 'experience' that conclusions are reached. It is within the life of the spirit, with its longings and desires, its 'awe-ness' and sense of mystery, that a calm and meditated reflection develop.

The written account of the creation of the human person is a result of this experiential process so contrary and alien to our western type of mental procedure. The coming into

being of the human person is reflected on within an experiential encounter with the divine. Within a structure which is an expression of the divine continually in dialogue with the human, the person is understood as the outcome of a loving context which, finally, leads the created human being to be a partner of the divine.

Within this unified vision, all that flows from it is an expression of this original beauty. All that the person expresses this aesthetic form which is at the heart of creation. Based on this vision, the creation of 'man' is the creation of the unified gender: God created man: male and female He created them' (*Genesis* chapter 1, verse 27).

God as presented within the account of *Genesis* is the one whom the person can call upon, can enter in dialogue with, can be experienced within a loving friendship of reciprocity, a relationship which is inclusive of one and all... God is not found in what He is or He has in Himself, but He is to be found in His allowing us to participate in Him, to share with Him.

1.1 The Family as Partner of God

When this anthropological understanding is taken into account, the models that come out of the Old Testament literature are very revealing. In actual fact we can identify two basic models of family. The first model is contained within the first historical books of the Old Testament. They reveal a model where the family is part and parcel of God's action within the history of salvation. The family is the place where, and through which, God manifests his plans and invites the family to participate in the actual realization of these plans. It is the family where the presence of God is seen as an invitation to all the members of the family to be participants in his plan of salvation. So was the family of Noah (*Genesis*, chapter 6), so were the families of Abraham, Isaac and Jacob.

The exclusive dimension of this rapport between God and the family is reflected in the determination to safeguard the faithfulness of the bond where adultery is seen as an act of betrayal. The same sacred aspect is reflected in the understanding of sexuality which is not elevated to a divine and absolute reality, like the sacred prostitution of the surrounding cultures. It is rather inserted within the context of the creative act of God, an act expressing blessings, faithfulness and joy in self-giving.

Together with these dimensions, the biblical account is also keen on insisting that the family is a reality fully immersed in time and space, called to reflect God's loving kindness towards humanity. The family experience is one where the sense of justice is central in its way of dealing with material goods, in the way it expresses solidarity with the widows and orphans, poor and strangers. The ideal for the family is one where its members have every right to live in a dignified and serene manner. And this ideal becomes the responsibility of every family in relation to self and others.

This ideal is rooted and enshrined within an experience which is not purely or exclusively human. Belief in God is an all pervasive experience where the human and the spiritual enrich each other in a reciprocal way. The covenant experience that God seals with his people in a way become the paradigm and the consequence of the understanding of the family. The family is understood as the symbol and the reality of the covenant that God

makes with his people. Here we notice a circular understanding, a reciprocal relationship between the family and the covenant. They both reflect and send back one to the other.

As the covenant is an experience of dialogue, so is the family. As the covenant expresses the total self-giving of God to his people, so do the members of the family to God and to each other. In this context, obedience to God is not pure submission or negation of self and selfhood, but rather the lively interaction between two unequal partners, God and the person, where the joy of one constitutes the life of the other; the life of the other reflects the joy of the One.

The first part of the Old Testament, the historical part, does not invent the family. It goes beyond that. It takes the family as it is and elevates it to a sublime understanding by rooting its meaning within an experience of the divine. The family develops into ‘the’ paradigm *par excellence* that best expresses God’s relationship with his people.

1.2 The Family as the Place of the Experience of God

The second part of the Old Testament is commonly called ‘wisdom literature’. This section deals with the challenges that a different historical and cultural environment brings with it. These are difficult times of the family. These are words that we may utter nowadays, but they have already been uttered by those living in those times.

Mixed marriages, with the consequent loss of the memory of the forefathers, was a huge challenge because of its novelty. Never had such a thing happened before. New ways of thinking and believing were making inroads within the mainly religious culture of the people of Israel.

Education became an important tool in keeping alive the heritage of the past, with its richness and goodness. Thus the family is now seen as the place where this memory needs to be kept alive and education becomes the way forward that can assure the survival of the family. In the beginning of the book of *Proverbs* we find the following verse: *My son, hear the instruction of thy father, and forsake not the law of thy mother (Proverbs, chapter 1, verse 8).*

The role of the mother contains both the right and the duty of educating the children. The contents of this experience is mainly centred around respect for one’s parents, and the way one deals both with persons and material goods. If respect for others is a reflection of the respect one holds for God, so is the way one deals with material goods.

Although being rich is considered to be a blessing, true wealth is the result of hard work and discipline. The process entailed ensures that one does not become attached to material possessions as being ends in themselves. The following two verses summarize the meaning of this:

Two things I have asked of thee, deny them not to me before I die. Remove far from me vanity, and lying words. Give me neither beggary, nor riches: give me only the necessities of life: Lest perhaps being filled, I should be tempted to deny, and say: Who is the Lord? or

being compelled by poverty, I should steal, and forswear the name of my God (*Proverbs*, chapter 30, verses 7-9).

The soul of this understanding can be said to be a development of the covenant paradigm. It now includes and gives importance to the wisdom and the fear of God as attitudes in day to day living. New challenges have to be faced which need to be interpreted not simply through written law but have to be dealt with in the heart.

Wisdom in the recurrent literature is seen as a 'person' taking the role of a mother or a spouse, or a sister who accompanies and enlightens whoever is willing to accept her guidance.

Wisdom has built her house, she has set up her seven columns; She has dressed her meat, mixed her wine, yes, she has spread her table. She has sent out her maidens; she calls from the heights out over the city: "Let whoever is simple turn in here; to him who lacks understanding, I say, Come, eat of my food, and drink of the wine I have mixed! Forsake foolishness that you may live; advance in the way of understanding. For by me your days will be multiplied and the years of your life increased." (*Proverbs*, chapter 9, verses 1-6).

The importance given to 'wisdom' in this part of the Old Testament is due to the fact that from this 'wisdom' depends the strength of the family, from this wisdom depends the strength of the community of Israel.

1.3 Summary

In brief we can say that the Old Testament brings in an original vision of the family. It is not considered as an accident of history or as a functional or biological necessity. It is rather the space where God's plan is reflected and unfolded at the same time. It develops into an experience of the way God deals with his people.

Marriage, therefore, becomes an act with a deeply rooted religious and spiritual meaning. It is taken as an act which mirrors in microcosm God's greater design for the human family. In this context, the family is elevated as the model of God's covenant with his people and the paradigm of its never ending memory.

All those realities that the family comes in contact with, whether they are friendships, or its dealings with material good, are under the influence of a relationship with God that is not unilaterally vertical. God's wisdom is a living reality which empowers all that the family comes in contact with. A faith attitude is not limited to believing without seeing, but rather understanding the ultimate as it is reflected in the immediate and vice-versa.

2. The Understanding of the Family in the New Testament

In his book *A Community of Character*, Stanley Hauerwas (Hauerwas, 1981, p.5) makes this comment about the family within the Christian tradition:

The family is a crucial focus for Christian social ethics, not in the hackneyed sense of being the 'bedrock' of society, but because the kind and form of family created by the Church is

one of the most telling marks of the Church's social significance. I think this is particularly clear when the Church's understanding of the family as an intergenerational institution is contrasted with the current understanding of the family as an interpersonal association between individuals.

This insight by Hauerwas is crucial in helping us to point out the silver thread that connects the Old with the New Testament. The narrative model that is so evident in the Old Testament somehow continues to be present in the New. The 'covenant - family' paradigm is further developed by the paradigm of 'Church - family.'

In the letters of Saint Paul we have a wealth of reflections that deal with this central issue for the understanding of the family. The two themes that are crucial in the way Paul deals with the family in his reflections are the figure of Christ and the experience of the Church. Within these two polarities Paul creates a frame out of which the relationship between husband and wife can be nurtured. It is also a frame where the attitudes of self-giving and respect of one partner to the other are not only paramount and foundational to any long-lasting relationship, but they also root that same relationship into the bigger narrative present in the Old and the New Testament. Marriage in this sense reflects, evokes and sends back to the great mystery of salvation.

In a way we can say that the image of the Old Testament is now personalized in the person of Christ and the community called the Church. Marriage and family become the basis for the way the new community understands the Church, and at the same time the relationship of total self-giving between Christ and his Church becomes the model that characterizes the love of the spouses. The kind of relationship present on the supernatural level, influences and enlightens the human level.

At this point it is worth pointing out how the social dimension is never considered to be second to the religious one. The anthropological framework of the Judeo-Christian tradition elevates the concept of time and space on the level of shared responsibility between God and his people, God and the Church. The family, therefore, is not a purely socially functional construct that somehow happens to be. The family is the place where this concept is embraced and taken on board as part of the vocation that the family has in giving in time and space a witness of that interaction between the human and the divine. Marriage between man and woman is nothing more than a witness of this unity, which in itself expresses the unity of humanity, male and female, but also the unity of the Creator and the creature.

3. The Understanding of the Family in the First Centuries of Christianity

The huge amount of period writing during the first centuries of the Christian era is witness to the importance that the family has had in the Church right from the very beginning. The family was the privileged space for the sharing and strengthening of faith. The family set-up was the place where the believing community used to meet. The family was the model of the Church and the place where its spiritual experience was lived out.

It is worth remembering that the first theologians were offering their reflection on the family within a philosophical frame promoted by the Roman Empire. Marriage was understood as a

very noble institution, a perfect union of both body and soul of the husband and wife. In this unity a community is formed unique in its genre and which is based on the attitude of reciprocal concern and self-giving.

Within this common framework, the first Christian community promoted fidelity within marriage - a biblical value which contrasted starkly with the allowance Roman law provided in relation to divorce, amongst other issues.

A writing of this period, known as *The Epistle to Diognetus*, gives a clear picture of how the early Christians lived within their social framework, and how they brought with them the values which resulted from their beliefs and which witnessed a sense of novelty in relation to the Roman custom:

For the Christians are distinguished from other men neither by country, nor language, nor the customs which they observe. For they neither inhabit cities of their own, nor employ a peculiar form of speech, nor lead a life which is marked out by any singularity. The course of conduct which they follow has not been devised by any speculation or deliberation of inquisitive men; nor do they, like some, proclaim themselves the advocates of any merely human doctrines. But, inhabiting Greek as well as barbarian cities, according as the lot of each of them has determined, and following the customs of the natives in respect to clothing, food, and the rest of their ordinary conduct, they display to us their wonderful and confessedly striking method of life. They dwell in their own countries, but simply as sojourners. As citizens, they share in all things with others, and yet endure all things as if foreigners. Every foreign land is to them as their native country, and every land of their birth as a land of strangers. They marry, as do all [others]; they beget children; but they do not destroy their offspring. They have a common table, but not a common bed. They are in the flesh, but they do not live after the flesh. They pass their days on earth, but they are citizens of heaven. They obey the prescribed laws, and at the same time surpass the laws by their lives. They love all, and are persecuted by all. They are unknown and condemned; they are put to death, and restored to life. They are poor, yet make many rich; they are in lack of all things, and yet abound in all; they are dishonoured, and yet in their very dishonour are glorified. They are evil spoken of, and yet are justified; they are reviled, and bless; they are insulted, and repay the insult with honour; they do good, yet are punished as evil-doers. When punished, they rejoice as if quickened into life; they are assailed by the Jews as foreigners, and are persecuted by the Greeks; yet those who hate them are unable to assign any reason for their hatred.

This quote is a synthesis of what might be considered the actual contribution of the early Christian community within the Roman Empire. We can summarize the contribution of the Christian community in the first three centuries as being one decidedly based on (a) an attitude which was receptive and respectful to the values they encountered in the environment they found themselves in; (b) they were single-minded in refusing any laws or customs which were contrary to human dignity or respect towards life; (c) they promoted a mentality influenced by respect towards each other and brotherly love.

The inspiring elements of this period, therefore, are the following:

- first and fundamental is the dignity of the human person: created in the image and likeness of God, the person cannot be degraded or declassified. Rights and duties are not to be assigned by birth and promoted by law, as was the case in Roman law, but are intrinsic to the person.
- God being the author of marriage, the latter is considered as an experience of beauty contrary to what heretics were promoting in the first centuries of Christianity. In a way, the dignity of the person finds in the experience of marriage a natural place that continues the original call to be ‘partner of God.’
- marriage becomes the paradigm and the model of Christ and his relationship with the Church, that is the community of believers.
- the education of children becomes the first duty of the parents. It is through their parents that children grow in the experience of love of God and neighbour. Already in this period we find the temptation to delegate this duty to others.
- education of the young is understood in the form of a loving experience, rather than teaching: love is communicated not taught. It is from an environment inspired by the values of harmony, love, respect, appreciation of beauty and an attitude of recognizing the goodness of others towards self, that children learn to make these values their own.
- finally, in educating the young, parents themselves grow in those values and attitudes they would like to see their children endowed and imbued with.

Conclusion

At the end of this paper I would like to make two simple points which I back with quotes from Hauerwas. The first one is that the religious approach privileged in this paper serves as the basis for understanding the family as the place for growth. And by growth I mean human, spiritual and ethical. The latter aspect cannot be separated from the first two and can neither be delegated, postponed or disregarded. The question ‘why?’ is not a question in relation to which we have the luxury to adopt a light-hearted attitude. It is a question written and proclaimed in our own search for meaning the moment we become aware of our innate inquisitiveness as rational human beings. This leads me to the first conclusion that the moral/ethical dimension of the family experience is at the core of the family as we encounter it in the Old and New Testament.

Regarding this point this is what Hauerwas has to say when he deals with the moral issue within today’s liberal frame of mind:

In liberal thought only if human beings can be separated in a substantial degree from kinship can they be free individuals subject to egalitarian policies of our society... In the name of freedom we have created “the individual,” who now longs for community in the form of “interpersonal interaction”... Thus, relations in the family have come to resemble relations in the rest of the society - namely, a relationship between friendly strangers... And as a result relations in the family too often become nothing less than power struggles between independent principalities... In summary, I am suggesting that the “crisis of the family” does

not indicate the absence of a moral ethos for the family, but reflects how the family has increasingly been formed by the deepest moral convictions we have about ourselves (Hauerwas 1981, pp.160-161).

The second point is that within the Judeo-Christian tradition we find the narrative model at its best. The family is inserted within 'the experience' of creation. It is a story of 'becoming' that best expresses the sense of longing that lies in the depth of the heart. What this story does is that it elevates and matures that sense of 'longing' into one of 'be-longing,' a 'be-longing' where the human only stands to gain in the encounter with the divine. From this initial and foundational encounter, the horizontal level of the family experience discovers that level of meaning and vision that enlightens it. Again Hauerwas succeeds in grasping the depth of it all in a unique way:

In closing, a brief mention of what I think religious faith has to do with marriage and the family. It is not merely that the Judeo-Christian tradition keeps people on the straight and narrow path necessary to sustain marriage. On the contrary, I begin my classes on marriage with the observation that both Christianity and marriage teach us that life is not chiefly about "happiness." Rather, the Hebrew-Christian tradition helps sustain the virtue of hope in a world which rarely provides evidence that such hope is justified. There may be a secular analogue to such hope, but for those of us who identify with Judaism or Christianity, our continuing formation of families witnesses to our belief that the falseness of this world is finally bounded by a more profound truth.

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THE MULTICULTURAL SOCIETY: SECULARISM, CHRISTIANITY, JUDAISM AND ISLAM - A FALSE CONFRONTATION OF VALUES?

MARIO ABDURRAHMAN FARRUGIA-BORG

In the wake of the end of the cold war and ideological confrontation between the Soviet Union and the United States some western ideologues and politicians are raising the spectre of another period of turmoil and conflict based this time on religious differences. They foresee a threat to western values and culture challenge to its recent ideological “triumph” from a resurgent Islam based on the latter’s growing numerical economic and military strength. This indeed is an ominous signal at a time when peace and co-operation is most essential.

The world today is passing through a period of rapid change. The unprecedented proliferation of knowledge, information and technology is expanding the horizon of the world that we have long known. Globalisation made possible by revolutionary developments in information and communications technology has on the one hand brought peoples and nations closer together and on the other made them interdependent as never before.

Problems in under-developed and war-torn countries are leading to exoduses of their people towards a better future in Europe. Although illegal immigration is rife in our time, Europe’s economy is moving to a point where it is going to need an influx of immigrants to strengthen its workforce.

Thus, a multicultural society is today inevitable. Followers of the World’s greatest religions come to live together as one nation. Jews, Christians and Muslims have become neighbors, literally. And this phenomenon will only grow in the future.

The question is, can Jews, Christians and Muslims live together in peace? Will they be able to live as one nation? Or will there be a confrontation of values? And what about the secular state, which must legislate for Jews, Christians and Muslims alike? Can citizens of a secular state, who actively practice their respective religions, be active in social and political life? Or will they become marginalized?

These are the challenges which the multicultural society must face in our time.

Migration

For the past few years, especially during the warm summer months, we have seen hundreds of migrants arriving on our shores illegally by boat. Most of them never wanted to land here, but had their sights set on mainland Europe.

The overwhelming number of arrivals had its toll on the Maltese, and the issues of racism, culture, religion were all brought up. The Maltese are, to a certain extent, divided regarding the issue. Opinions varied, some were extreme. A fear that a large influx of people would change our culture and religion was and still is present. However, the general idea is that our island is too small to take large numbers of immigrants, so a solution must be found for these people in other, larger, countries.

The attitude towards migration is not only defined by rational arguments. Even though we can prove that increasing migration has both a cultural and economic advantage to our society, this still does not have to lead to a different attitude towards ‘foreigners’. We have to consider which conditions in our thinking are necessary to change our attitude towards the ‘foreigner’. The way we think about ‘foreigners’ has in essence much to do with the way we perceive ourselves.

One of the most important foundations for a policy that does not welcome the foreigner (of the restrictive foreigner’s policy) is the fear that comes from the sense of threat. The foreigner is perceived as a threat. Not only because of the number of foreigners that would arrive but more importantly because of the unknown. This implies evading a confrontation with the ‘difference’. To maintain the evasion there follows aversion, also because of a misplaced sense of superiority. We see ourselves as highly civilized and developed against others who are less civil and developed.

Chenjerai Hove, a writer from Zimbabwe wrote: “.....I resent living in a country where everyone thinks and says the same. That is boring. I want to see straight and crooked noses, weird, ugly and beautiful faces. That is my ideal. That is why I put colour in my work”.

The Multicultural Society from a Muslim Point of View

The Muslim, acknowledging one Creator, sees humanity as one. Thus, to the Muslim, colour, race and language - the obvious external differences within the family of man - are signs of God’s wondrous creativity, the God-ordained diversity of mankind within its overall unity. Such outward differences can never constitute a reason for either looking up to or despising another individual, for the only criteria Islam acknowledges for distinction or greatness among human beings are spiritual and moral qualities such as the excellence of a person’s character.

Judaism, Christianity and Islam - Common Values

All great near eastern religions including Islam, Christianity and Judaism have a similar origin, background and historical context. Jews, Christians and Muslims all revere Abraham as a Patriarch or a great prophet. Jews, Christians and Muslims also revere Moses, while Muslims have great respect for Jesus, although Islam and Christianity differ regarding the nature of Jesus and his mission on Earth.

Many important elements are common between Islam and Christianity. Muslims and Christians share many similar beliefs, values, moral injunctions and principles of behaviour. Christians and Muslims believe in God the Creator, who is Eternal, Merciful, Forgiving and Just.

Jews are regarded by Muslims as ‘People of the Book’, along with Christians, because God had conveyed to them his Divine Guidance through Divine Scriptures revealed to different Prophets.

Jews and Christians lived alongside a majority of Palestinian Muslims for hundreds of years in Palestine, and problems only started when an official Jewish state was declared on Palestinian land in 1948. Problems aggravated when, after 1967, more lands were annexed to the state of Israel. But conflicts here are not of a religious nature.

Each of these three religions has played a vital role in inculcating a spirit of mutual accommodation and a sense of compassion and brotherhood among human beings irrespective of their differences in faith, colour or creed. This has often been a driving force for social reforms and checking oppression, injustice and exploitation. An important contribution of religion is the promotion of a moral code and ethical principles and precepts. It has provided a global view of the world to its adherents, which traditionally remained limited to tribal and family matters.

In any case, the world has come a long way from the middle ages when religious strife and sectarian conflicts marked relations between and among different communities and disturbed peace and stability in the society. For centuries, people of different faith lived side by side in peace and amity in the near east, south Asia, Europe and elsewhere. No doubt, there were pockets marked by bloodshed, rivalry and competition but except for the crusades, which had their own peculiar driving force, these were essentially localized.

The Muslim and the Christian communities today constitute about 20% and 25% of the global population respectively. It would be unthinkable for such big communities to live in conflict and confrontation. Apart from the force of interdependence in an era of globalization to which reference has already been made, the emergence of what writers like V S Naipul describe as a “universal civilization and cultural coming together of humanity and increasing acceptance of common values, beliefs, orientations and practices” would strongly argue against any such conflict along “fault lines” dividing civilisations. The need of the hour is to launch a concerted effort by public leaders, religious scholars, academics and civil society to highlight the common message of universal brotherhood, friendship and

harmony which are the main themes of all religions and to work unitedly towards a prosperous, stable and harmonious international community.

Secularism

Secularism started in the West as a response to ‘theocratic’ systems where the state imposed the law of Religion on its citizens, so that the law of the state and religious law were one and the same.

Secularism today makes a distinction between state and religion. In a secular society, citizens are allowed to practice any religion, as long as the law of the state is not broken. Also, when legislating, the government of a secular state is not guided by the laws of any religion but by a set of values which, in many societies, is called a constitution.

There are, however, various levels of secularism. In Malta, for example, which is a secular state, the President of the Republic has stated various times that he would not endorse a law which goes against his set of values and beliefs. And that is his right. Again in Malta, divorce is illegal, even for a marriage constituted only under Maltese law. This is because the Maltese Government is Roman Catholic and divorce is prohibited in the Roman Catholic Religion.

Having said the above, can citizens who practice Judaism, Christianity and Islam live in harmony with the law in a secular state? The answer would generally be yes, because a secular state normally does not prohibit its citizens from practicing their religion freely, neither does it make them do what is prohibited in their religion.

No secular state, for example, forces Jews to work on Saturday, Christians to use artificial contraception, or Muslims to drink alcohol. Nonetheless, there are exceptions. The prohibition of girls and women wearing the Muslim headscarves in government places in France is a classic case. Here, even though a Muslim girl or woman is obliged to cover her hair according to her Religion, the state has prohibited her from doing so. This law did not affect Jews and Christians in the same manner, since Jews are not obliged to wear the star of David, neither are Christians obliged to wear crucifixes.

But in the main, there is no conflict as regards religion and a secular state.

Approaching Multi-Culturalism

There are generally three approaches to multiculturalism. The first approach is intolerance, taking the extreme form of killing biologically or socially (marginalization) other cultures; or imprinting on them the culture of the invader / colonizer / empire builder. Nothing compares to Western imperialism in its extreme asymmetry, imposing language, body language and religion, barely assimilating some spices and dishes into their own culture. The idea of possessing the only valid faith, as in the Papal Bull of May 4, 1493, Inter Caetera set the tone; handing over territories (even yet to be discovered) to the Spanish Kings.

The second approach is tolerance, better than intolerance, but only a passive, peaceful coexistence, essentially signaling that “I am generous that I tolerate that you exist”. This opens for a world of (dominant) nation states that tolerate each other, better than imperialism with a cultural component. And it opens for human rights inside the states, protecting ‘minorities’. The formula facilitates a transition from a multicultural world to multicultural societies. But this is not good enough in a world where different cultures will have ever broader and deeper contact.

If intolerance leads to being denied, then obviously the latter prevails. The dominant culture has won. Some compromises may be carved out as small niches for one’s own culture.

The third approach is dialogue, based on mutual respect and curiosity like “how wonderful that you are different from me, then we can learn from each other and maybe develop something new!” This is not a debate, which is a form of warfare with verbal means, to show that the other side is false / wrong / bad / ugly / profane. A major step forward for a multicultural society is with the parts seeing each other as sources of mutual enrichment. It is not frequent. But this active peaceful coexistence is clearly a jump forward.

Conclusion

We must open our hearts and minds to each other. Instead of sensing danger when somebody is different let us be filled with joy at the opportunity to learn, to enrich and be enriched, to live in peace and create peace. We must have a lifelong dedication to increasing knowledge and sensitivity to major multicultural groups, by learning about their values, customs, world views, political history and contributions to humanity.

In the emerging reality of the “global village” international peace, co-operation and understanding is a vital imperative. This alone can sustain and promote common aspirations of human kind to live a prosperous and purposeful life in peace, security and dignity.

Experiences of recent years have amply demonstrated that cooperation and understanding among nations create the environment conducive to attaining these common objectives. Equally, conflict and acrimony in any part of the world can vitiate the atmosphere even in far away lands.

Whilst keeping the basic message of devotion let us find new ways, acts and words to live together in harmony. It is within the spirit of freedom of interpretation of one’s own religion that genuine respect for other religions can evolve.

Let the future be an era of active peace built in our hearts and our minds, and enacted in our deeds.

**EUROPEAN LAW
AND THE FAMILY**

THE CONCEPT OF “FAMILY” IN COMMUNITY LAW AND POLICY

DANIÈLE COP

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Although neither the Treaty on European Union (“TEU”) nor the Treaty establishing the European Community (“ECT”)¹ do not empower the European Union to develop a policy in relation to the “family”, Community law and policy touch upon family matters either via international conventions in the field of human rights and fundamental freedoms (section 2), or through the adoption of measures that affect the family or family members (section 3).

¹ In Article 63(2) of the Treaty establishing the European Community (the “ECT”) reference is made to “family reunification” in the context of measures on immigration policy; in terms of Article 67(5) ECT, the Council can adopt, following the co-decision procedure, measures provided for in Article 65 (in the field of judicial cooperation in civil matters having cross-border implications), *with the exception of aspects relating to family law*.

The objective of this paper is to give an overview of the *acquis communautaire* relating to the family and to assess how the (nuclear) family is conceived in these legislative and policy measures.

It should be made clear from the outset that marriage as a foundation of a family and aspects relating to the development, dissolution and reconfiguration of a family will be looked at from a civil law perspective. Although some Member States of the European Union attribute civil effects to canonical marriages and to decisions of ecclesiastical authorities and tribunals on those marriages², this is not the rule and the premise in this paper is that there is a need, or at least, a demand for the legal recognition of forms of civil union other than marriage within the Christian (or other religious) meaning.

1. The “Nuclear” Family

According to the Universal Declaration of Human Rights, the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.³

The traditional European model of the so-called “nuclear family” or “cornflake family” (as distinct from the extended family) can be described a household consisting of two married, heterosexual parents and their legal children (siblings). Faced with the social, cultural and even economic changes in modern society, one can hardly argue that the nuclear family as described above can still be regarded as the norm, in the sense that intrinsic values and rights and obligations attributed to family members only apply to such nuclear family. For instance, it is generally accepted that discrimination in treatment of “legitimate” and “illegitimate” children is not justified. The number of non-marital families is on the rise, single-parent households are increasingly common and families headed by same-sex couples do not stir up as much controversy as they used to do some decennia ago, at least in certain countries.

2. The Protection of the “Family” by the European Convention for the Protection of Human Rights and Fundamental Freedoms

Although a number of international conventions on human rights and fundamental freedoms contain provisions in connection with the family and family life, these conventions do not define the term “family”. The application and interpretation of “family rights” show that the concept of “family” is not a static one and that the scope of application of these rights may be extended in view of social, legal, medical and scientific developments. It emerges from the case law of the European Court for Human Rights (the “ECHR”) that “family rights” are

² See e.g. references to treaties with the Holy See in Article 63 (as amended) ² of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

³ Article 16 of the Universal Declaration of Human Right reads:

“(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

to be assessed in the light of present-day conditions⁴, and that the protection conferred by the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms does not exclusively concern the traditional nuclear family as defined above.

In terms of Community law and policy, the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention") is probably the most significant amongst the international human rights instruments. Pursuant to the Treaty establishing the European Union, the European Union (the "EU") will respect fundamental rights, as guaranteed by the Convention and as they result from the constitutional traditions common to the Member States, as general principles of Community law.⁵ The Court of Justice of the European Communities has explicitly referred to ECHR case law in certain cases touching upon human rights.

Some examples (by no means intended as an exhaustive overview) will therefore be given in this section of cases in which the ECHR has interpreted Articles 8 and 12 (in some instances, in combination with Article 14) of the Convention. It should be borne in mind though that there are several international instruments which specifically concern children⁶, affiliation⁷ and parental responsibilities.⁸

2.1 The Right to Found a Family

The Convention in Article 12 (Right to marry) proclaims that "Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right." The exercise of this right gives rise to personal, social and legal consequences. It is subject to the national laws of the contracting States, but the limitations thereby introduced must not restrict or reduce the right in such a way or to such an extent that the very essence of the right is impaired.⁹ In the Council of Europe's member States, these limitations appear as conditions and are embodied in procedural or substantive rules. The former relate mainly to publicity and the solemnisation of marriage, while the latter relate primarily to capacity, consent and certain impediments.¹⁰

2.1.1 *Marriage as a Condition to the Right to Found a Family?*

Prima facie, it would appear that in Article 12 of the Convention a link is made between the right to marry and the right to found a family. Clearly, if "marriage" in the traditional legal sense would be the exclusive consideration in the definition of family, such definition would be obsolete in this day and age. Even though the ECHR has not formally recognised that

⁴ See, e.g. ECHR, *Fretté v. France*, no. 36515/97, ECHR 2002-I, paragraph 34 and ECHR, *Johnston and Others v. Ireland*, judgment of 18 December 1986, Series A no. 112, pp. 24-25, paragraph 53.

⁵ Article 6(2) Treaty on European Union (TEU).

⁶ E.g. UN Convention on the Rights of the Child of 20 November 1989.

⁷ E.g. European Convention on the Adoption of Children, European Convention on the Legal Status of Children born out of Wedlock.

⁸ E.g. European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children; European Convention on the Exercise of Children's Rights; Convention on contact concerning children; Hague Convention of 19 October 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children.

⁹ ECHR, *Rees* judgment of 17 October 1986, paragraph 50.

¹⁰ ECHR, *F v. Switzerland*, Case No 21/1986/119/168, paragraph 32.

Article 12 entails the right not to marry¹¹, it has indicated that the right to found a family is not a condition of the right to marry and that the inability of any couple to conceive or parent a child cannot be regarded as *per se* removing their right to enjoy the first limb of the provisions of Article 12, i.e. the right to marry.¹²

So far there is no ECHR case law establishing that the legal effects attaching to marriage should apply equally to situations that are in certain respects comparable to marriage. Nevertheless, it can be argued that marriage is not a condition for enjoyment of respect for private and family life as protected by Article 8 of the Convention.¹³ It must also be mentioned that the Convention proclaims that the enjoyment of the rights and freedoms set forth in the Convention must be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.¹⁴

2.1.2 *The Right to Marry only between Men and Women?*

In the *Rees* judgment of 1986, the ECHR was of the opinion that the right to marry guaranteed by Article 12 refers to the traditional marriage between persons of opposite biological sex.¹⁵ In more recent cases¹⁶ though, the ECHR proposed to look at the situation within and outside the contracting State (*in casu* the United Kingdom) to assess “in the light of present-day conditions” what is now the appropriate interpretation and application of the Convention.¹⁷ Reviewing the situation in 2002, the ECHR observed that Article 12 secures the fundamental right of a man and woman to marry and to found a family. Although the first sentence of Article 12 refers in express terms to the right of a man and woman to marry, the ECHR was not persuaded that at the date of the case cited it could still be assumed that these terms must refer to a determination of gender by purely biological criteria. It was also noted that Article 9 of the Charter of Fundamental Rights of the European Union departs, no doubt deliberately, from the wording of Article 12 of the Convention in removing the reference to men and women.¹⁸ The ECHR thus reached the conclusion that a post-operative male to female transsexual who did not have the possibility to marry her male partner because of the allocation of sex in UK law to that registered at birth, was entitled to claim that her right to marry had been infringed because the limitation

¹¹ See e.g. the ECHR’s landmark decisions rendered in 1979 in the *Marckx* case (ECHR, Case of *Marckx vs. Belgium*). Ms. Paula Marks maintained the view that the right to not to marry is inherent in the guarantee embodied in Article 12; she argued that in order to confer on her daughter the status of a “legitimate” child, she (the mother) would have to legitimate her and, hence, to contract marriage. In this respect the ECHR noted that there was no legal obstacle confronting Ms. Marckx in the exercise of the freedom to marry or to remain single, and that consequently, there was no need to determine whether the Convention enshrines the right not to marry. With regards to Ms. Marckx’s argument that the fact that, in law, the parents of an “illegitimate” child do not have the same rights as a married couple also constitutes a breach of Article 12, the ECHR stated that this appears to construe Article 12 as requiring that all the legal effects attaching to marriage should apply equally to situations that are in certain respects comparable to marriage. The ECHR decided that it could not accept this reasoning and found that the issue under consideration fell outside the scope of Article 12.

¹² ECHR, case *Christine Goodwin v. the United Kingdom*, paragraph 98.

¹³ See section 2.2 below, in particular the *Evans* case.

¹⁴ Articles 8 and 12 in combination with Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

¹⁵ ECHR, *Rees* judgment of 17 October 1986, paragraph 48.

¹⁶ ECHR, case *I v. the United Kingdom* and case *Christine Goodwin v. the United Kingdom* of 11 July 2002.

¹⁷ ECHR, case *Christine Goodwin v. the United Kingdom*, paragraph 75.

¹⁸ ECHR, case *Christine Goodwin v. the United Kingdom*, paragraphs 99 and 100.

imposed by UK law was impairing the very essence of the right to marry, and that in her case there was a breach of Article 12 of the Convention.¹⁹ As will be discussed below, the European Court of Justice has explicitly referred to this case in its ruling on *K.B. v NHS*.

Despite a number of invitations, the ECHR has so far refused to apply the protection of Article 12 to same-sex marriage.

2.2 The Right to Respect for Family Life

It is stated in Article 8 of the Convention that:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

By guaranteeing the right to respect for family life, Article 8 presupposes the existence of a family - irrespective, it seems, of whether it is based on marriage or not.²⁰

Although the essential object of Article 8 of the Convention is to protect the individual against arbitrary interference by the public authorities, there may in addition be positive obligations inherent in an effective respect for private and family life, albeit subject to the State's margin of appreciation. In determining whether or not a positive obligation exists, regard must be had to the fair balance that has to be struck between the general interest of the community and the interests of the individual, the search for which balance is inherent in the whole of the Convention. In striking this balance the aims mentioned in the second paragraph of Article 8 may be of a certain relevance, although this provision refers in terms only to "interferences" with the right protected by the first paragraph - in other words is concerned with the negative obligations flowing therefrom.²¹

The principle of equal treatment between "legitimate" and "illegitimate" children which is widely recognised nowadays follows from Article 8.²² In this respect, it is worth recalling the *Marckx* judgment, in which it was made clear that Article 8 makes no distinction between the "legitimate" and the "illegitimate" family. Such distinction would not be consonant with the word "everyone", and this is confirmed by Article 14 of the Convention

¹⁹ ECHR, case *Christine Goodwin v. the United Kingdom*, paragraphs 101.

²⁰ ECHR, case of *Marckx vs. Belgium*, paragraph 31.

²¹ ECHR, *Rees* judgment of 17 October 1986, paragraphs 35 and 38 (and references therein), see also: ECHR, case *Christine Goodwin v. the United Kingdom* of 11 July 2002, paragraph 72.

²² Brussels Convention of 12 September 1962 on the Establishment of Maternal Affiliation of Natural Children, prepared by the International Commission on Civil Status and entered into force on 23 April 1964; Convention of 15 October 1975 on the Legal Status of Children born out of Wedlock, concluded within the Council of Europe and entered into force on 11 August 1978. Both of these instruments are based on the principle "*mater semper certa est*"; the second of them also regulates such questions as maintenance obligations, parental authority and rights of succession. See: ECHR, case of *Marckx vs. Belgium*, paragraph 41.

with its prohibition, in the enjoyment of the rights and freedoms enshrined in the Convention, of discrimination grounded on “birth”.

A recent case that made local headlines is that of *Mizzi v. Malta*. According to the ECHR’s case-law, the situation in which a legal presumption is allowed to prevail over biological reality might not be compatible, even having regard to the margin of appreciation left to the State, with the obligation to secure effective “respect” for private and family life. The ECHR considered that the fact that Mr. Mizzi was never allowed to disclaim paternity over his wife’s daughter, was not proportionate to the legitimate aims pursued. It follows that a fair balance had not been struck between the general interest of the protection of legal certainty of family relationships and the applicant’s right to have the legal presumption of his paternity reviewed in the light of the biological evidence. Therefore, despite the margin of appreciation afforded to them, the domestic authorities failed to secure to the applicant the respect for his private life, to which he is entitled under the Convention. Thus, the Court found that there had been a violation of Article 8.²³ This seems to imply that the right to respect for one’s private life may entail the right to rebut the existence of a “family” relationship.

Addressing the question whether there is a right to have children would go beyond the remit of this paper. However, it may be useful to mention the recent case in *Evans v. UK* where the ECHR found that in adopting legislation providing for a legal framework authorising and regulating IVF treatment and granting to both parties to IVF treatment the right to withdraw consent to the use or storage of their genetic material at any stage up to the moment of implantation of the resulting embryos, the United Kingdom did not exceed the margin of appreciation afforded to it or upset the fair balance required under Article 8 of the Convention. Although the ECHR stated that it had great sympathy for the plight of the applicant who, if implantation did not take place, would be deprived of the ability to give birth to her own child, the judgment entailed that the applicant, a woman whose ovaries were removed following cancer treatment, could not proceed with the implantation of fertilised embryos when her former partner withdrew consent for the embryos to be used after they split up.²⁴

In the *Evans* case the applicant had relied amongst others on Article 8 of the Convention and more specifically on the right to respect for one’s private life. The ECHR agreed that the case concerned the applicant’s right to respect for her private life, since “private life” is a broad term, encompassing, *inter alia*, aspects of an individual’s physical and social identity including the right to personal autonomy, personal development and to establish and develop relationships with other human beings and the outside world. It incorporates the right to respect for both the decisions to become and not to become a parent.²⁵

²³ ECHR, judgment of 12 January 2006 in the case of *Mizzi v. Malta*, paragraphs 113-115.

²⁴ ECHR, judgment of 7 March 2006 in the case of *Evans v. the United Kingdom*, paragraphs 68-69.

²⁵ ECHR, judgment of 7 March 2006 in the case of *Evans v. the United Kingdom*, paragraphs 57.

2.3 Dissolution and Reconfiguration of a Family

2.3.1 *The Right to Divorce and the Right to Re-Marry?*

In the case of *Johnston and others v. Ireland*, the ECHR decided that the right to divorce cannot be derived from Article 12 of the Convention. Furthermore, although Article 8 of the Convention applies to families, irrespective of the married status of the parties that found it, and the protection of private or family life may sometimes necessitate means whereby spouses can be relieved from the duty to live together, it does not oblige States that acceded to the Convention to introduce measures permitting divorce and re-marriage.²⁶ However, the ECHR held that, if national legislation allows divorce, which is not a requirement of the Convention, Article 12 secures for divorced persons the right to remarry without unreasonable restrictions.²⁷

As far as the European Union is concerned, it is noteworthy that at present Malta is the only Member State that does not allow divorce (although it recognises divorce judgments given by competent foreign courts).²⁸

2.3.2 *The Right to Maintain Family Relationships*

A considerable number of cases brought before the ECHR on the basis of Article 8, whether on its own or in combination with other articles of the Convention, regard situations where one or both of the parents are denied access to their children.

For example, in the case of *Sommerfeld v. Germany*, which was referred to the Grand Chamber, the ECHR took the view that decisions refusing a parent access to his child amounts to an interference with his right to respect for his family life, as guaranteed by Article 8(1). Any such interference constitutes a violation of this Article unless it is “in accordance with the law”, pursues an aim or aims that are legitimate under Article 8(2) and can be regarded as “necessary in a democratic society”. The ECHR indicated that in determining whether the refusal of access was “necessary in a democratic society”, consideration of what lies in the best interest of the child is of crucial importance. The margin of appreciation to be accorded to the competent national authorities varies in accordance with the nature of the issues and the importance of the interests at stake. Thus, the ECHR recognised that the authorities enjoy a wide margin of appreciation, in particular when deciding on custody. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed.

²⁶ ECHR, *Johnston and others v. Ireland*, Case No 6/1985/92/139, see also ECHR, *F v. Switzerland*, Case No 21/1986/119/168.

²⁷ ECHR, *F v. Switzerland*, Case No 21/1986/119/168, paragraph 38.

²⁸ Commission Staff Working paper - Annex to the Green Paper on applicable law and jurisdiction in divorce matters [COM (2005)82 final], paragraph 3.1.

In the same case, the ECHR held that German legislation which put fathers of children born out of wedlock in a different, less favourable position than divorced fathers infringed Article 14 in combination with Article 8 of the Convention.^{29 30}

3. The “Family” under Community Law

Admittedly, the definition and treatment of “family” in terms of national law is influenced by historical and cultural factors. Since each EU Member State has its own cultural and historical background, there are - sometimes significant - divergences in the family law of the respective Member States. However, the increase in “international” families living and moving within and into the European Union, has prompted issues that transcend the national aspects of family law. Although family law is strictly speaking a competence of the Member States, the European institutions have therefore adopted family-related legislation, in accordance with the principle of subsidiarity laid down in Article 5 ECT, on the basis of:

- Articles 12, 18, 40, 44 and 52 ECT regarding non-discrimination and free movement;
- Article 63(3)(a) ECT concerning measures on immigration policy in the area of conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification, and
- Articles 61(c) and 67(1) ECT, in connection with the establishment of an area of freedom, security and justice.

Furthermore, the Court of Justice of the European Communities has referred to the fundamental “family rights” enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms in a number of cases.

3.1 General principles of Community Law

As mentioned above, the European Union is bound to respect fundamental rights as guaranteed by the Convention, including the right to found a family and the right to respect for one’s family life, as general principles of Community law.³¹

Article 9 of the Charter of Fundamental Rights (“the Charter”) (which does not have legally binding force) provides that “The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.”

²⁹ Case of Sommerfeld v. Germany of 8 July 2003, paragraphs 62-63 and 93.

³⁰ At this point, the United Nations’ Convention on the Rights of the Child should also be mentioned. For instance, according to Article 9(1) of the Convention: “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence.” (Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990).

<http://www.unhcr.ch/html/menu3/b/k2crc.htm>

³¹ Article 6(2) TEU.

According to Article 7 of the Charter, “Everyone has the right to respect for his or her private and family life, home and communications.”

The Treaty establishing a Constitution for Europe³² incorporates the Charter of Fundamental Rights of the European Union and states that this Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. The provisions of the Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law.³³

3.2 The Family of a Union Citizen

3.2.1 The Directive on Free Movement

It is stated in the Preamble (recital 5) of Directive 2004/38/EC on the free movement of citizens of the Union and their family members³⁴ that “the right of all Union citizens to move and reside freely within the territory of the Member States should, if it is to be exercised under objective conditions of freedom and dignity, be also granted to their family members, irrespective of nationality.”

For the purposes of Directive 2004/38/EC, “family member” is defined as:

- (a) the spouse;
- (b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;
- (c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);
- (d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b).

According to Article 3, the Directive applies to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members who accompany or join them. Furthermore, without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State is

³² Official Journal C 310 of 16 December 2004. The Constitution is yet to be ratified by the Member States. Since the negative referenda regarding the ratification of the Constitution in France and the Netherlands, it is not clear when the Constitution will enter into force.

³³ Preamble of Part II and Article II-11 of the Constitution. See also Article I-9 of the Constitution.

³⁴ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC. The deadline for implementation of this Directive is 30 April 2006.

obliged, in accordance with its national legislation, to facilitate entry and residence for the following persons:

- (a) any other family members, irrespective of their nationality, who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;
- (b) the partner with whom the Union citizen has a durable relationship, duly attested.

The host Member State must undertake an extensive examination of the personal circumstances and justify any denial of entry or residence to these people.

The Directive also aims to legally safeguard family members in the event of the death of the Union citizen, divorce, annulment of marriage or termination of a registered partnership. In such circumstances family members already residing within the territory of the host Member State retain their right of residence exclusively on a personal basis.³⁵

In this context it is noteworthy that in January 2006, the European Commission was asked by the European Parliament to put forward proposals guaranteeing the freedom of movement of “EU citizens and their family members and registered partners of either gender”. It appears that one of the main complaints of homosexual associations and NGOs is that registered homosexual couples from Member States where same-sex marriages or partnerships are legal, lose all their rights as official partners - most importantly the right of family reunification - when they move to another Member State which does not recognize same-sex couples. MEPs were also of the opinion that EU countries should enact legislation to end discrimination faced by same-sex partners as regards inheritance rights, property arrangements, tenancy, pensions, tax, and social security.³⁶

3.2.2 *The Brussels II Regulation*

The new Brussels II Regulation³⁷ is one of the instruments contributing to the cooperation in civil law. It aims to establish better collaboration between the authorities of Member States so as to facilitate the movement of citizens. It not only regards recognition and enforcement of judgments in matrimonial proceedings, but covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with a matrimonial proceeding. For the purposes of this Regulation “parental responsibility” means all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect; the term includes rights of custody and rights of access.

³⁵ Recital 15 and Articles 12, 13 and 18 of Directive 2004/38/EC.

³⁶ [http://www.europarl.eu.int/news/expert/infopress_page/016-4330-17-1-3-902-20060113IPR04270-17-01-2006-2006-
-false/default_en.htm](http://www.europarl.eu.int/news/expert/infopress_page/016-4330-17-1-3-902-20060113IPR04270-17-01-2006-2006-
-false/default_en.htm)

³⁷ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. The scope of application of this Regulation is not limited to EU citizens; it basically concerns the jurisdiction of and enforcement of judgments by the courts of the Member States.

As the combination of different conflict-of-law rules (an area of legislation that is not harmonised) and the current jurisdiction rules may give rise to problems in the context of “international” divorce, a public consultation was launched on the applicable law and jurisdiction in divorce matters. It was highlighted in the Green Paper on applicable law and jurisdiction in divorce matters that “Apart from the lack of legal certainty and flexibility, the current situation may also lead to results that do not correspond to the legitimate expectations of citizens. Moreover, Community citizens who are resident in a third State may face difficulties in finding a competent divorce court and to have a divorce judgment issued by a court in a third State recognised in their respective Member States of origin. There is finally a risk of “rush to court” under the current situation.”³⁸

3.3 The Family of a Third Country National

3.3.1 The Directive on the Right to Family Reunification

With regards to third country nationals (i.e. non-EU citizens), it was considered necessary to adopt measures concerning family reunification in conformity with the obligation to protect the family and respect for family life enshrined in many instruments of international law. Family reunification is considered a necessary way of making family life possible. It helps to create socio-cultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty.³⁹

The scope of application of Directive 2003/86/EC on the right to family reunification is delineated by reference to the “sponsor” of the family whose family members are third country nationals.⁴⁰

It is made clear in Directive 2003/86/EC that the need for compliance with the values and principles recognised by the Member States, in particular with respect to the rights of women and of children, justifies the possible taking of restrictive measures against applications for family reunification of polygamous households. In fact, in the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a Member State, the Member State concerned is not allowed to authorise the family reunification of a further spouse and Member States may limit the family reunification of minor children of a further spouse and the sponsor.⁴¹

Compared to the treatment of EU citizens and their family members in terms of Directive 2004/38/EC, the rights of third country nationals and their family members under Directive 2003/86/EC are similar but not equivalent to those of EU citizens. For instance, there are

³⁸ Green Paper on applicable law and jurisdiction in divorce matters [COM (2005)82 final], paragraph.

³⁹ Recitals 2 and 4 of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. The United Kingdom, Ireland and Denmark are not bound by this Directive or subject to its application.

⁴⁰ Subject to exceptions, the Directive applies where the sponsor is holding a residence permit issued by a Member State for a period of validity of one year or more who has reasonable prospects of obtaining the right of permanent residence, if the members of his or her family are third country nationals of whatever status. (Article 3) “Sponsor” means a third country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her. (Article 2(c)).

⁴¹ Recital 11 and Article 4(4) of Directive 2004/38/EC.

differences in treatment of minor children, first-degree ascendants, unmarried partners⁴² and formalities, examinations and entry and residence requirements.⁴³

3.3.2 *The Directive on the Status of Long-term Residents*

As mentioned above, third country nationals and their family members do not have the “full” rights of free movement enjoyed by EU citizen and their (third-country) family members respectively.⁴⁴ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents aims to approximate the legal status of third-country nationals that have resided in a Member State for a certain period of time to that of Member State’s nationals and to grant third-country nationals with long-term residence status in a Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the European Union. This Directive also contains provisions on family members of third-country nationals who are long-term residents, in order to preserve family unity and to avoid hindering the exercise of the long-term resident’s right of residence.⁴⁵

3.4 The Court of Justice’s View

The Court of Justice of the European Communities (the “Court”) has been confronted with a number of cases where citizens felt aggrieved because of the lack of assimilation of stable relationships or registered partnerships (either between same-sex or opposite sex couples) to marriage.⁴⁶ The Court has held that, considering the circumstances, there is no requirement to regard such *de facto* or legally recognized relationships as equivalent to marriage and that it is for the legislature alone to adopt, if appropriate, measures which may affect that position. In line with the ECHR’s views on the matter, the Court of Justice stated that:

“It is not in question that, according to the definition generally accepted by the Member States, the term marriage means a union between two persons of the opposite sex.

It is equally true that since 1989 an increasing number of Member States have introduced, alongside marriage, statutory arrangements granting legal recognition to various forms of union between partners of the same sex or of the opposite sex and

⁴² Family reunification applies in any case to members of the nuclear family, that is to say the spouse and the minor children. It is for the Member States to decide whether they wish to authorise family reunification for relatives in the direct ascending line, adult unmarried children, unmarried or registered partners as well as, in the event of a polygamous marriage, minor children of a further spouse and the sponsor. Where a Member State authorises family reunification of these persons, this is without prejudice of the possibility, for Member States which do not recognise the existence of family ties in the cases covered by this provision, of not granting to the said persons the treatment of family members with regard to the right to reside in another Member State, as defined by the relevant EC legislation. See: Recital 9 and 10 and Article 4 of Directive 2004/38/EC.

⁴³ Chapters III and IV of Directive 2004/38/EC. Specific provisions are laid down with respect to family reunification of refugees (Chapter V).

⁴⁴ Chapter VI of Directive 2004/38/EC.

⁴⁵ Article 16 of Directive 2003/109/EC; see also recital (20) of the Preamble to Directive 2003/109/EC. “Family members” in this Directive means the third-country nationals who reside in the Member State concerned in accordance with Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

⁴⁶ See e.g. Judgment of the Court of 17 April 1986 in Case 59/85, Reed and Judgment of the Court of 17 February 1998 in Case C-249/96, Grant, Judgment of the Court of 31 May 2001 in Joined cases C-122/99 and C-125/99 P, D and Kingdom of Sweden v Council of the European Union.

conferring on such unions certain effects which, both between the partners and as regards third parties, are the same as or comparable to those of marriage.

It is clear, however, that apart from their great diversity, such arrangements for registering relationships between couples not previously recognised in law are regarded in the Member States concerned as being distinct from marriage.”⁴⁷

Although in several areas pertaining to its competence, the ECJ has shown a progressive or creative approach in interpreting the provisions of the Treaty establishing the European Community and secondary legislation, it has been criticised for not doing so where it was asked to recognise that stable relationships or registered partnerships may have legal effects similar as those related to marriage. It should be borne in mind in this respect that the Community is restricted in the (legislative) action it can take in view of its lack of specific competence with regards to family law and the principle of subsidiarity. In the *Grant* judgment, it was re-affirmed by the Court that although respect for the fundamental rights which form an integral part of the general principles of law is a condition of the legality of Community acts, those rights cannot in themselves have the effect of extending the scope of the Treaty provisions beyond the competence inherent in it. The scope of any provision of Community law is to be determined only by having regard to its wording and purpose, its place in the scheme of the Treaty and its legal context.⁴⁸

Nonetheless, in *K.B. v NHS*⁴⁹, the Court ruled that Article 141 ECT on the principle of equal pay, in principle, precludes legislation, which, in breach of the European Convention for the Protection of Human Rights and Fundamental Freedoms, prevents a couple formed between parties of the same biological sex but where one of the parties has undergone gender reassignment from fulfilling the marriage requirement which must be met for one of them to be able to benefit from part of the pay of the other (in this case a survivor’s pension). It is for the national court to determine whether in a case such as that in the main proceedings a person in K.B.’s situation (the female partner of a female-to-male transsexual) can rely on Article 141 ECT in order to gain recognition of her right to nominate her partner as the beneficiary of a survivor’s pension.

In the same judgment the Court repeated that the decision to restrict certain benefits to married couples while excluding all persons who live together without being married is either a matter for the legislature to decide or a matter for the national courts as to the interpretation of domestic legal rules, and individuals cannot claim that there is

⁴⁷ Judgment of the Court of 31 May 2001 in Joined cases C-122/99 P and C-125/99 P, D and Kingdom of Sweden v Council of the European Union, paragraphs 34-36. The joined cases related to the status of civil servants working for the Council. ‘D’ appealed against a Council decision denying him the household allowance awarded to married couples. D claimed the same right as married partners, given that his partnership with another Swedish citizen of the same sex was recorded in Sweden. His case was rejected. In his Opinion, the Advocate-General referred to Article 9 of the Charter of Fundamental Rights of the European Union as confirmation of the difference between marriage, on the one hand, and unions between people of the same sex on the other. He indicated that “In the explanations drawn up under the aegis of the presidium of the convention, which do not have any legal value but which are simply designed to clarify the provisions of the Charter in the light of the discussions which took place within the convention, there is the remark that Article 9 “neither prohibits nor requires the grant of the status of marriage to relationships between persons of the same sex.” In my opinion, that confirms the difference between marriage and a relationship between two people of the same sex.” (paragraph 97 of the Opinion).

⁴⁸ Judgment of the Court of 17 February 1998 in Case C-249/96, *Grant*, paragraph 45.

⁴⁹ Judgment of the Court of 7 January 2004 in Case C-117/01 *K.B. v NHS*.

discrimination on grounds of sex, prohibited by Community law. However, the Court followed the Opinion of the Advocate-General in stating that there is inequality of treatment which, although it does not directly undermine enjoyment of a right protected by Community law, affects one of the conditions for the grant of that right. In the case of *K.B. v NHS* the inequality of treatment does not relate to the award of a widower's pension but to a necessary precondition for the grant of such a pension: namely, the capacity to marry.⁵⁰

The Opinion of Advocate-General Ruiz-Jarabo Colomer on the *K.B. v NHS* case offers some interesting perspectives. The Advocate-General suggested that:

“It might be asked whether it is reasonable to select marriage as the relationship upon which the grant, in relevant circumstances, of a widow(er)'s pension is conditional. Consideration of that issue would require consideration to be given to the objective pursued by a pension of that kind and, in parallel, to the suitability of a purely formal contract to symbolise a community based on solidarity: consideration should at least be given to the possibility that relations of another kind merit like protection. That type of analysis, which is appropriate in a mature society in which substance prevails over form, is in practice becoming more prevalent. Thus, on the one hand it is permissible to question whether a marriage is genuine in the sphere of, for example, immigration law, whilst, on grounds of fairness, cases of genuine cohabitation having no official recognition are equated to marriage.”

However, realising that such reasoning could still be considered too audacious, the Advocate-General put forward the following solution:

“The question referred, as reformulated, would thus concern the compatibility with Community law of a national rule which, by not recognising marriage between transsexuals, denies them access to a widow's or widower's pension.

If the underlying claim is to receive a positive response, a twofold test must be passed:

- (a) the national rule must be contrary to Community law; and
- (b) the Court of Justice must be competent to make a ruling, i.e. the dispute must concern a matter covered by the Treaty.

There is no doubt that the fact that it is impossible for United Kingdom transsexuals to marry in their new physiological sex is contrary to a general principle of Community law.

It is well established in the case-law of the Court of Justice that in the matter of fundamental rights the general principles of Community law must be derived from the constitutional traditions common to the Member States, in the light of the guidance afforded by international treaties for the protection of human rights which

⁵⁰ Judgment of the Court of 7 January 2004 in Case C-117/01 *K.B. v NHS*, paragraphs 28-30.

have been ratified by the Member States. The European Convention on Human Rights is also of particular relevance in that regard.”⁵¹

Finally, it is worth reproducing the quote with which Advocate-General Ruiz-Jarabo Colomer finishes his Opinion (in the same way as Advocate General Tesouro in his Opinion in *P. v S.* when he paraphrased the words of Advocate General Trabucchi in an Opinion dating from almost 30 years ago): “If we want Community law to be more than a mere mechanical system of economics and to constitute instead a system commensurate with the society which it has to govern, if we wish it to be a legal system corresponding to the concept of social justice and European integration, not only of the economy but of the people, we cannot fail to live up to what is expected of us.”⁵²

Transsexualism is obviously different from the various permutations associated with sexual orientation (heterosexuality, homosexuality or bisexuality). In legal terms this can be translated in the difference between discrimination based on sex and discrimination on the basis of sexual orientation. On the one hand, the Court in *P. v S.* held that the right not to be discriminated against on grounds of sex is one of the fundamental human rights whose observance the Court has a duty to ensure and that, accordingly, the scope of the Equal Treatment Directive cannot be confined simply to discrimination based on the fact that a person is of one or other sex. In view of its purpose and the nature of the rights which it seeks to safeguard, the scope of the Directive is also such as to apply to discrimination arising from the gender reassignment of the person concerned.⁵³ On the other hand, in *Grant*⁵⁴, the Court stated that discrimination based on sex did not cover discrimination based on sexual orientation. It also found that the rule in *P. v S.* was limited to the case of a worker’s gender reassignment. The Court established furthermore that in the state of the law then prevailing within the Community, stable relationships between two persons of the same sex were not regarded as equivalent to stable relationships outside marriage between persons of opposite sex or to stable relationships between spouses.⁵⁵

In the case of *D. v Council*⁵⁶ the Court pointed out that the alleged discrimination based on sex did not exist, since it was irrelevant whether the applicant was a man or a woman; nor was there any unequal treatment on ground of sexual orientation given that it was not the sex of the partner which determined whether the household allowance was granted, but the

⁵¹ Opinion of Mr. Advocate General Ruiz-Jarabo Colomer delivered on 10 June 2003 in Case C-117/01 *K.B. v NHS*, paragraphs 63-66.

⁵² Opinion of Mr. Advocate General Ruiz-Jarabo Colomer delivered on 10 June 2003 in Case C-117/01 *K.B. v NHS*, paragraph 80.

⁵³ Case C-13/94 *P. v S.* [1996] ECR I-02143, paragraph 19-20. See also Case C-125/99 *D. v Council* [2001] ECR I-4319.

⁵⁴ Judgment of the Court of 17 February 1998 in Case C-249/96, *Grant*. A female employee of a railway company claimed that the grant of travel concessions to an employee and his or her spouse or common law opposite-sex partner with whom the employee had sustained a “meaningful” and stable relationship, and the corresponding refusal of concessions to same-sex couples in similar circumstances infringed the prohibition on discrimination set out in what was then Article 119 of the EC Treaty.

⁵⁵ Judgment of the Court of 17 February 1998 in Case C-249/96, *Grant*.

⁵⁶ Joined cases C-122/99 and C-125/99 *P, D and Kingdom of Sweden v Council of the European Union*. A male official of the European Communities, of Swedish nationality, who had a registered partnership under Swedish law with another man, had claimed that he was entitled to the household allowance which the staff regulations confined to married persons. *D* claimed that terms such as “spouse” or “married official” must be interpreted by reference to the law of the Member States and not be given an independent definition, and that the refusal to pay the allowance therefore amounted to discrimination based on sex.

legal nature of the ties between the official and the partner. The Court went on to consider the views prevailing within the Community as a whole, from which it concluded that there was a diversity of laws and an absence of any general assimilation of marriage and other forms of statutory union.⁵⁷

Finally, reference should be made to the *Safet Eyüp* case⁵⁸, where the Court stated that having regard to the particular facts of the case before the national court, and in particular the fact that the Eyüps' period of extra-marital cohabitation took place between their two marriages, that period cannot be regarded as an interruption of their joint family life in Austria, so that it must be taken into account in its entirety for the purposes of calculating periods of legal residence within the meaning of the first paragraph of Article 7 of Decision No 1/80 of the Association Council on the development of the Association between the European Economic Community and Turkey. The Court confirmed that the first paragraph of Article 7 of Decision No 1/80 is designed to promote family unity in the host Member State, in order to facilitate the employment and residence of Turkish workers duly registered as belonging to the labour force of the Member State concerned, by first allowing family members who have been authorised to join the migrant worker to be present with him and by then consolidating their position with the right to work as employed persons in that State. Thus, without explicitly recognising the equivalence of marriage and a stable relationship of cohabitation between unmarried partners, the Court came to the conclusion that the unity of the family, in pursuit of which the person concerned entered the territory of the host Member State, should be evidenced for a certain period by actual cohabitation in a household with the worker who is lawfully resident.

As Advocate-General Ruiz-Jarabo Colomer pointed out in his Opinion on *K.B v NHS*, the judgment in *Eyüp* is indicative for the tendency shown by the Court of Justice to interpret family-law concepts in accordance with the spirit and purpose of the legislation with which the reference is concerned and the assessment of the particular features of a specific case which means that an equitable solution is reached (*ex aequo et bono*).⁵⁹

3.5 The Social Agenda

The European Union's social agenda for 2005-2010 complements and supports the renewed Lisbon Strategy for growth and jobs. Of particular relevance to the subject matter of this paper is the Community's commitment to gender equality, as part of the social agenda.

⁵⁷ Joined cases C-122/99 and C-125/99 P, D and Kingdom of Sweden v Council of the European Union, paragraphs.

⁵⁸ Judgment of the Court (Sixth Chamber) of 22 June 2000 in Case C-65/98, *Safet Eyüp*. The issue to be decided was whether the foreign, cohabiting partner of a Turkish worker lawfully established in a Member State should be regarded as a "family member" for the purposes of the first paragraph of Article 7 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Economic Community and Turkey. The facts can be summarised as follows: in 1983, Mrs. Eyüp married a Turkish worker who had been part of the legal Austrian labour force since 1975. Between the couple's divorce in 1985 and their being re-married in 1993 they had continued to live together in Austria, during which time four of the couple's seven children were born. The Court had to determine whether that period should be included for the purposes of calculating the five years of legal residence, which under Decision No 1/80 was a condition of the members of the family of a Turkish worker having access to the host country's labour market.

⁵⁹ Opinion of Mr. Advocate General Ruiz-Jarabo Colomer delivered on 10 June 2003 in Case C-117/01 *K.B. v NHS*, paragraph 80.

In terms of family life it is recognised that one of the major factors for the persistence of gender gaps is a poor work-life balance which still drives workers out of the labour market and which contributes to lower fertility rate. In the 2006 Report on equality between men and women, the Commission stated that “A good work-life balance helps to reduce gender gaps and to improve the quality of the work environment while contributing to addressing the challenge of demographic changes. To be effective, it should be devised and promoted as a policy for both women and men at all stages of their life, including for young people as underlined in the European Youth Pact. A renewed commitment is needed to deliver accessible, affordable and good quality care facilities for children and other dependants.”⁶⁰ In the Roadmap for equality between men and women 2006-2010 key actions identified to enhance reconciliation of work, private and family life include supporting the achievement of the Barcelona targets on childcare and the development of care facilities through the Structural Funds and the exchange of good practices.⁶¹

The idea of getting more women to work and to encourage men to take up family responsibilities (in particular through incentives to take parental and paternity leaves and to share leave entitlements with women) is an economic and social necessity. It is also a far cry from the traditional or stereotypical role of women within the family as carers of children and other dependants.

Thus, gender equality is not only a fundamental right, a common value of the EU, but also a necessary condition for the achievement of the EU objectives of growth, employment and social cohesion.⁶² In spite of the lack of competence in the area of family law and the proposition that respect for fundamental rights as a general principle does not *per se* extend the scope of the Treaty provisions beyond the competence inherent in it, the EU is in a position to promote and adopt measures to achieve the EU’s economic and social objectives, for instance through reconciliation policies which help create a flexible economy that should at the same time improve the quality of women’s and men’s lives.

4. Conclusions - The Family in a European Multi-Cultural Inclusive Society

The conclusions to be drawn from the legislative and jurisprudential developments described above can be summarised as follows:

- (i) the fundamental “family rights” (i.e. the right to found family and the right to respect for family life) are uncoupled from the right to marry;
- (ii) in terms of the horizontal relationship between individuals who (wish to) found a family, stable relationships of cohabitation, civil unions and partnerships are not recognised by the ECHR and the Court of Justice as

⁶⁰ Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on equality between women and man - 2006 COM(2006)71 final, p. 3 and 7.

⁶¹ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - A Roadmap for equality between women and men 2006-2010 COM(2006) 92 final, p. 5-6.

⁶² Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - A Roadmap for equality between women and men 2006-2010 COM(2006) 92 final, p. 2.

producing the same effects as marriage and marriage is still regarded as open only to men and women (although not necessarily based on biological gender);

- (iii) insofar as the vertical relationships within the family are concerned (between parents and children), parental responsibility and the rights of children are not considered to be only a matrimonial matter;
- (iv) whilst the importance to protect the unity of the family is recognised and protected by law, there seems to be a need to take action in the field of divorce (including legal separation and marriage annulment) and other instances entailing the disruption, dissolution and reconfiguration of family life;
- (v) in order to achieve the objectives of growth, economic and social cohesion, the promotion of gender equality requires *inter alia* the elimination of stereotypes and the balancing of the roles of men and women in the family in order to reconcile work and family life.

In general, it would appear that in spite of limitations in terms of competence and the role of the ECHR and Court of Justice, international and Community law is impinging, albeit slowly, on the margin of appreciation of Member States in family matters, or at least that Member States are induced to take account of clear and uncontested evidence of a continuing international trend in favour of increased social acceptance and legal recognition of alternative forms of “family”, alongside the traditional nuclear family. The areas where the European has been “holding back”, namely alternative forms of civil union (as opposed to marriage) and divorce, are those where the divergences between the family laws of the Member States are still deemed too wide.

The diversity of laws and the absence of the general acceptance of a given principle by the Member States is used in particular by the Court of Justice (and the ECHR) to justify a more conservative approach than it may perhaps wish to follow. The most recent and future enlargements are likely to result in even less convergence between family laws. It seems however that on a national level, most governments of the EU15 are adopting an increasingly liberal approach in family matters. Several Member States are moving towards the recognition of families other than those based on “traditional” marriage, or have already done so. Member States such as Belgium, Spain, the Netherlands, Sweden and the United Kingdom, have introduced, alongside marriage, statutory arrangements granting legal recognition to various forms of union between partners of the same sex or of the opposite sex and conferring on such unions certain effects which, both between the partners and as regards third parties, are the same as or comparable to those of marriage. Furthermore, there seems to be a trend to allow or to promote “consensualism” in family matters, in particular in the field of divorce law and parental responsibility.⁶³

⁶³ Although there are significant divergences in national divorce legislation, there seem to be certain convergences, in particular the increasing role of divorce by consent and reduced emphasis on fault. See: Commission Staff Working paper - Annex to the Green Paper on applicable law and jurisdiction in divorce matters [COM (2005)82 final], paragraph 3.1. See also the new Brussels II Regulation.

In the debate about the recognition of alternative forms of civil union or partnership (as opposed to “marriage”), much emphasis is laid on the rights of same-sex couples. Nevertheless, the debate is and should be taking place in a broader context. Opposite sex couples may have equally valid reasons to opt for an alternative to marriage, for instance, for reasons related to religion or belief, or merely because they wish to secure their interests and those of third parties in case the unity of the family is disrupted somehow. It is also conceivable that unmarried individuals wish to assume and share a certain degree of parental responsibility over children of which they are not the natural or adoptive parents and whether they are related to each other or not (e.g. in cases where the parents have passed away).

In a broader context, it can be argued that society in general could benefit from the legal recognition of alternative forms of civil union or partnership. Firstly, there are advantages for social stability in recognising and institutionalising such alternatives in the sense that this could offer protection for essential rights and enforceability of obligations of members of the non-typical family.

Secondly, the debate could be linked to the one regarding parental responsibility. The existence of parental responsibility and family values does not depend on whether the “parents” are married. Insofar as the attribution, exercise, delegation, restriction or termination of parental responsibility is governed by law, parents not opting for marriage or carers who may not be eligible for marriage could benefit from a legal framework which allows them to share the burden as they deem appropriate, within certain boundaries, and which would have legal effects between each other and towards third parties. Inasmuch as marriage can be regarded as an institutionalised relationship with legal effects that also offers a safety net in case of disruption of family life, an alternative, perhaps more flexible and accessible model can be developed in the form of a civil union or partnership.

Finally, if family is the fundamental group unit of society and is entitled to protection by society and the State, it could be argued that partners of whatever sex or sexual orientation, with or without children, that assume economic and social responsibilities towards each other, deserve legal protection and recognition with effects vis-à-vis third parties. The main argument in favour of this position would be that legally recognising such responsibilities can alleviate the economic and social burden of the State (e.g. as a matter of social security) and that it would allow governments to do what they are supposed to do in a democratic society: meet the legitimate needs and expectations of society, rather than adopting a paternalistic approach which may frustrate the basic rights of its citizens.

This brings us again to the question if and whether the European Union has a role to play in the matter. Clearly, the piecemeal approach towards the regulation of family matters is not satisfactory. The increasing mobility of citizens within and the migration of third-country nationals to the European Union engenders an increasing number of “international” marriages and families, where family members are of different nationalities, live in different Member States or live in Member States of which they are not nationals. The argument that there is absent a general consensus in Europe as to the ways in which citizens may found a family and arrange their family responsibilities (horizontal rights and obligations and vertical responsibilities), begs the question whether in an enlarged and possibly further

enlarging European Union, faced with the likelihood of even less convergence in family laws of the Member States, it is possible for the European institutions to refrain from action which would ensure that a EU citizen's (or third country national's) family life or situation be recognised by other (host) Member States. In other words, would it be fair to expect EU citizens and their families to accept that the past and future enlargement engenders even less legal certainty and security in terms of mutual recognition of their family situation? In absence of such recognition, non-marital families exercising their free movement will continue to be treated unequally compared to marital families, for instance, when it comes to inheritance rights, pensions, tax, and social security. This seems hard to reconcile with the Union's fundamental objectives of economic and social cohesion. As the Court of Justice has repeatedly stated it is for the legislature alone to adopt, if appropriate, measures requiring *de facto* or legally recognized relationships to be treated as equivalent to marriage measures. As the European institutions have done in other areas where it was not deemed appropriate to adopt legislative measures, a possible (temporary) solution could be to have recourse to the open method of co-ordination ("OMC"), a method currently used in the policy areas of education, training and culture and employment and social affairs.

In any event, if the EU were to embrace a definition of family, such definition would have to take account of the situation in the whole Community, not merely in one (progressive or conservative) Member State, and would have to respect the principle of equality of treatment and the diversity in a pluralistic and multi-cultural society. Furthermore, it should be sufficiently flexible so that it can be applied in an ever evolving society, irrespective of the degree of "progress" or "acceptance" in the individual Member States. Finally, it must be borne in mind that the concept of family is linked to certain rights and obligations based on underlying family values and the premise that as a fundamental group unit of society, the family is entitled to protection by society and the State. A Community definition of family would therefore have to comprise all types of family units that are deemed to deserve such protection and that should attract a similar (if not the same) set of essential rights and obligations commonly attributed to the traditional nuclear family.

THE DEFINITION OF ‘FAMILY’ UNDER EU LAW

EUGENE BUTTIGIEG

Free Movement Provisions in the EC Treaty and Case Law

Community secondary legislation and case law governing the rights emanating from the EC Treaty provisions on the free movement of workers provide us with the opportunity to understand how the political and judicial institutions of the European Union define a ‘family’ for purposes of law.

Regulation 1612/68¹ expands on the Treaty rights of migrant workers by conferring various rights on the migrant workers’ families such as the right to install oneself with the worker in the territory of the Member State where the worker has sought work. The underlying rationale, as explained in the preamble, is to enable the migrant worker to be joined by his family and to facilitate the integration of that family into the host country. In Article 10 of Title III entitled ‘workers’ families’, it lists the following as part of the ‘family’:

- (a) Spouse
- (b) Descendants under the age of 21 years or dependants over that age
- (c) Dependent ascendants of the worker or his spouse.

The Regulation recognizes (without identifying) other ‘members of the family’ who might also be dependant on the worker or were living under the same roof in the country from where the worker came, but they are granted lesser rights (Art 10 (2) - Member States are merely required to ‘facilitate the admission’ of such members of the family). So only the above listed members of the family are deemed to form part of the ‘nucleus’ of the family.

The European Court of Justice has interpreted the notion of ‘descendant’ under this Regulation widely to include not just the descendants from the present relationship between the worker and spouse but also descendants of the worker and those of the spouse from a previous relationship that was terminated by a divorce (*Baumbast*²). In other words, even children from a marriage that has been terminated by divorce are part of the family of the worker just as the children from his/her current relationship.

¹ Council Regulation 1612/68 on Freedom of Movement for Workers within the Community OJ [1968] L257/2.

² Case C-413/99 *Baumbast and R v Secretary of State for the Home Department* [2002] ECR I-7091.

On the other hand, the Court has defined ‘spouse’ in a conventional way as partners in a marital relationship. Separation, though, unlike divorce, would not deprive the partner from the status of ‘spouse’. In *Diatta*³ the Court considered a married couple that was separated as still falling within the notion of ‘spouses’ but indirectly hinted that married couples that are divorced would no longer be considered as ‘spouses’ for the purposes of the Regulation.⁴ Thus the spouse who divorced a worker would not be entitled to benefit any more from the rights that the Regulation bestowed on the worker’s family.

The Court has refused to consider the term ‘spouse’ as including unmarried persons living together in a stable relationship (cohabitantes). In *Reed*⁵ the Court ruled that an unmarried British woman could not rely on the Regulation to claim the right to join in the Netherlands the British man with whom she had been living and who had moved to the Netherlands to work. It held that ‘Article 10(1) of Regulation 1612/68 cannot be interpreted as meaning that the companion, in a stable relationship, of a worker who is a national of a Member State and is employed in the territory of another Member State must in certain circumstances be treated as his “spouse” for the purposes of that provision’.

Considering both judgments (*Diatta* and *Reed*), Hervey remarks:

[T]he Community’s formal construct of ‘family’ is based upon a traditional model which excludes ‘atypical’ families, for example single parent families. These families are predominantly headed by women [EC Commission Communication on Family Policies, COM(89) 363, 7]; where that woman is not a worker, let alone a Community ‘migrant worker’, then the family is unable to benefit from the provisions of Community law. If the woman is a worker some form of child-care is necessary and will generally be carried out by another woman, for example a grandparent, aunt, or an unrelated close associate (Glasner, 1992:84). That unpaid woman carer will only fall within the Community definition of ‘family’ if she is a dependent ascendant. The Community construct of family reflects a norm which is not experienced by all families, and has a restrictive impact on women, since it is their experience which it least reflects.⁶

Sex Equality Laws and Case Law

The free movement provisions are not the only provisions that have provided jurisprudence and legislation that sheds light on the kind of family model that the Community institutions embrace. Case law and legislation on sex equality have also depicted the type of family model that is endorsed by Community law.

As shown above, even under free movement case law *Reed* showed the Court privileging heterosexual marriages over other forms of stable relationships while denying divorcees all

³ Case 267/83 *Diatta v Land Berlin* [1985] ECR 567.

⁴ It stated that ‘a marital relationship cannot be regarded as dissolved so long as it has not been terminated by the competent authority’.

⁵ Case 59/85 *Netherlands v Reed* [1986] ECR 1283.

⁶ ‘Migrant workers and their families in the European Union: the pervasive market ideology of Community law’ TK Hervey in *New Legal Dynamics of European Union* (eds. J Shaw and G More) 91, 106.

free movement rights. But one finds further evidence of the Court's bias for heterosexual marriages in the cases under the EU's sex equality laws. In *Grant v South West Trains*⁷ the Court refused to extend the scope of Article 141 EC Treaty and the Equal Pay Directive⁸ to cover discrimination on the grounds of sexual orientation. It observed that while in some Member States cohabitation by two persons of the same sex is treated as almost equivalent to marriage, in most of them it is treated as equivalent to a stable heterosexual relationship outside marriage only with respect to a limited number of rights or else it is not recognised at all. Moreover, the Court cited several decisions of the former European Commission of Human Rights where the latter while acknowledging the modern evolution of attitudes towards homosexuality reiterated that stable homosexual relationships do not fall within the scope of the respect for family life under Article 8 of the European Convention of Fundamental Human Rights and that national provisions which, 'for the purpose of protecting the family', accord more favourable treatment to married persons and persons of opposite sex living together as man and wife than to persons of the same sex in a stable relationship are not contrary to Article 14 of the Convention (which prohibits *inter alia* discrimination on the ground of sex).

Furthermore, the Court cited the *Rees* judgment of 17 October 1986 and the *Cossey* judgment of 27 September 1990 where the European Court of Human Rights itself interpreted Article 12 of the Convention as applying only to the traditional marriage between two persons of opposite biological sex. The Court thereby concluded that: 'It follows that, in the present state of the law within the Community, stable relationships between two persons of the same sex are not regarded as equivalent to marriages or stable relationships outside marriage between persons of opposite sex.'

This judgment was relied upon by the Court of First Instance when in the later case, *D and Sweden v Council*,⁹ the Court reiterated that 'Community notions of marriage and partnership exclusively address a relationship founded on civil marriage in the traditional sense of the term'. This judgment was subsequently upheld on appeal by the Court of Justice.¹⁰ D who had a homosexual partnership that was registered under Swedish law that accorded such a partnership the same rights and privileges as marital partnerships could not therefore claim that his partner was a 'spouse' and thereby claim the allowances that the Council paid to the 'spouses' of Community officials just as any other spouse of the opposite sex. Homosexual partnerships even when recognised by national law just like heterosexual partnerships not legitimated by civil marriage have no place in the Community family model. The Community concept of spouse and partner excludes same sex partnerships and heterosexual partnerships not founded on marriage.

This case law contrasts sharply with the position taken by the European Court of Human Rights that has in more recent years often shown itself to be willing to recognize a 'de facto' family life between stable unmarried heterosexual couples¹¹ and, according to some

⁷ Case C-249/96 *Grant v South West Trains* [1998] ECR I-621.

⁸ Council Directive 75/117 on the Application of the Principle of Equal Pay for Men and Women OJ [1975] L45/19.

⁹ Case T-264/97 *D and Sweden v Council* [1999] ECR II-1.

¹⁰ Case C-122/99P and C-125/99P, *D and Sweden v Council* [2001] ECR I-4319.

¹¹ *Marckx v Belgium* Series A No 31 (1979) 2 EHRR 330; *X, Y & Z v UK* Application 21830/93 (1997) 24 EHRR 143; *Kroon v Netherlands* Series A No 297-C (1994) 19 EHRR 263; *Keegan v Ireland* Series A No 290 (1994) 18 EHRR 342.

commentators, might even be moving towards a recognition of family life between same-sex couples.¹² However, the European Court of Justice is not legally bound to follow the European Court of Human Rights jurisprudence in the interpretation of the European Convention of Human Rights and indeed there have been several instances where its interpretation of the Convention's provisions differed from the interpretation given by the European Court of Human Rights¹³ so that the more liberal view taken by the latter Court need not necessarily influence the European Court of Justice's view of what constitutes a 'family'.¹⁴

Case Law Bias for Traditional Family Roles

McGlynn¹⁵ reads more than just this bias against same sex partnerships and heterosexual partnerships not founded on marriage in the Court's judgments. Considering a series of cases spanning 20 years from the mid-1980s with *Commission v Italy*¹⁶ and *Hofmann*¹⁷ up to the more recent *Hill and Stapleton*¹⁸ and *Abdoulaye*¹⁹ she also perceives a bias for the traditional roles for women and men in this 'family' - one based on the man as the traditional breadwinner and the woman with her predominant maternal role having the primary responsibility of child minding and care and expected to relegate paid employment and career to second place after her responsibilities within the home.

Commission v Italy concerned Italian legislation that seemingly discriminated against men because it granted leave only to women on the adoption of a child while *Hofmann* concerned the allegedly discriminatory nature of German law that granted maternity leave only to women and denied men, who wished to take on the role of child carer during the initial months following the birth of the child while the mother continued to work, a similar period of leave. In both cases, the Court found no discrimination because it emphasized the special relationship between mother and child at the period of entry into the family of the natural or adopted child. McGlynn observes that, here:

¹² H Toner *Partnership Rights, Free Movement and EU Law* 87-88.

¹³ Contrast Case 374/87 *Orkem v Commission* [1989] ECR 3283 and Case T-112/98 *Mannesmannrohren-Werke v Commission* [2001] ECR II-729 with *Funke v France* Series A No 256-A (1993) 16 EHRR 297; Cases 46/87 & 227/88 *Hoechst* [1989] ECR 2859 with *Niemietz v Germany* Series A No 251-B (1992) 16 EHRR 97, *Chappell* Application No 10461/83, Series A No 152A and *Colas Est v France* Application No 37971/97; Case C-159/90 *SPUC v Grogan* [1991] ECR I-4685 with *Open Door Counselling Ltd and Dublin Well Woman Centre v Ireland* Series A No 246; Case C-17/98 *Emesa Sugar v Aruba* [2000] ECR I-665 and Case C-466/00 *Arben Kaba v Home Secretary (No 2)* 6 March 2003 with *Vermeulen v Belgium* Application No 19075/91 20 Feb 1996 Reports 1996-I, 224 and *Kress v France* Application No 39594/98 7 June 2001.

¹⁴ In Case C-65/98 *Safet Eyüp v Landesgeschäftsstelle des Arbeitsmarktservice Vorarlberg* [2000] ECR I-4747 although AG La Pergola in his opinion (paragraphs 18 and 23) refers with apparent approval to the European Court of Human Rights case law accepting an unmarried partner as a family member, citing some of the judgments mentioned in n 11, in the judgment the ECJ makes no reference whatsoever to the European Convention of Human Rights on this point and remains silent on the issue of the 'family status' or otherwise of unmarried couples and on the question of the equal treatment of married and unmarried couples.

¹⁵ 'A Family Law for the European Union?' C McGlynn in *Social Law and Policy in an evolving European Union* (ed J Shaw). See also S O'Leary *Employment Law at the European Court of Justice* 214-231.

¹⁶ Case 163/82 *Commission v Italy* [1983] ECR 3273.

¹⁷ Case 184/83 *Hofmann v Barmer Ersatzkasse* [1984] ECR 3047.

¹⁸ Case C-243/95 *Hill and Stapleton v The Revenue Commissioners and the Department of Finance* [1998] ECR I-3739.

¹⁹ Case C-218/98 *Abdoulaye v Renault* [1999] ECR I-5723.

[T]he Court reinforces sexual divisions of labour in which child care is always the responsibility of mothers, ignoring any conception that the father may also have a legitimate need and/or desire for a period of leave. Fatherhood is thereby limited, by implication, to a breadwinning role, with the assumption that a man's primary commitment and identification should be with paid work, rather than child care...This clearly assumes that the mother has a more important role than that of the father. There is no desire to protect (or encourage) fathers, or fathers' special relationships with their children.

While these two judgments date back to the mid-1980s when the role of men and women in the family were still rooted in the traditional concept of man as the breadwinner and the woman as the child-carer, McGlynn shows that with *Abdoulaye* at the turn of the century, it is clear that the Court is still stuck to this notion of family life as in this case it saw no discrimination in a collective agreement entered into by Renault with its workers that granted a lump sum payment to female employees taking maternity leave but not to male employees following the birth of a child, thereby discouraging men from taking up a significant role in the care and upbringing of their children.

McGlynn is critical of this 'model European family' as constructed by Community law as she deems it to be 'mythical and imaginary' and 'bearing little relation to the realities of family life in the EU'. It is seen as excluding some families from rights under EU law, privileging specific relationships and perpetuating discrimination against women and men.

According to McGlynn, what emerges is a

particular conception of the traditional "nuclear" family: that of the heterosexual married union, in which the husband is head of the family and principal breadwinner and the wife is the primary child carer. It is also a conceptualisation of family which reinforces the notion of children as dependants... This pattern of the Court's jurisprudence has led Isabella Moebius and Erika Szyszczak to argue that the free movement provisions are based on a "male breadwinner family model". The apparent aim of Community law, therefore, is to privilege, and encourage the movement of, those families which provide the "infrastructure for men's mobility", that is, the availability of a (preferably full-time) wife.

Political Institutions and Member States

In contrast with the conservative view taken by the European Court of Justice of the 'model European family', the European Parliament, Commission and Council, have shown a more 'progressive' stance in their efforts at developing an EU family policy.²⁰ Nevertheless, this notwithstanding, when faced with the opportunity to steer Community law in a direction that would include in the family fold cohabitantes and homosexual partners, the political institutions and the Member States were unable to agree on a clear-cut legislative change that would embrace them in the 'model European family'. Following much lengthy and

²⁰ 'A Family Law for the European Union?' C McGlynn in *Social Law and Policy in an evolving European Union* (ed J Shaw).

lively debate over a proposed directive that *inter alia* would amend the definition of ‘family member’ in Regulation 1612/68 with proposed amendments shifting from extending the notion of ‘spouse’ to unmarried heterosexual partners only to extending it to same-sex partners or registered partners only to extending it to both categories or to neither, the European Parliament and Council finally settled for a provision in the adopted Directive 2004/38²¹ that only slightly departed from the entrenched jurisprudence described above.²²

Article 2 of this directive replaced the said Article 10 of Regulation 1612/68 as from the end of April of this year with a broader definition of a ‘family member’ that includes besides the spouse also ‘the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State.’ Moreover, the directive (Article 13) will extend the rights to the registered partner’s direct descendants and ascendants and will allow such rights to be retained by the spouse or partner even on divorce or annulment of marriage or termination of the registered partnership provided such a family member is a national of a Member State.

Thus, homosexual partners are recognized as ‘family members’ *only if the national law recognizes their registered partnership as equivalent to marriage*. Moreover, the definition does not extend to unmarried heterosexual or same-sex partners in a stable relationship as was originally proposed by the Commission.

The same approach was taken in Council Directive 2003/86 on the right to family reunification²³ that was adopted a few months earlier and determines the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States (termed ‘sponsors’ by the directive). In Article 4 it recognizes as the family members with an automatic right to entry and residence, the spouse and their natural or adopted minor children. But it leaves it up to the discretion of the Member States whether or not to authorize the entry and residence of dependant ascendants and adult unmarried children and of the ‘unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership ...’ and their children. However, Member States may, if they so wish, decide that registered partners (so not any unmarried partners living in a stable relationship) are to be treated equally as spouses for the purpose of family reunification which would give them an automatic right of entry and residence. So once again it is dependent on each individual Member State’s perception of ‘family’ - Community law remains neutral as far as cohabitation and homosexual relationships are concerned. Member States remain free to retain a conservative approach of recognizing only heterosexual marriages.

²¹ Directive 2004/38 of the European Parliament and Council on the right of Union citizens and their family members to move and reside freely within the territory of the Member States OJ [2004] L158/77.

²² ‘Partnership Rights, Migration and EC Law’, H Toner in *European Union Law for the Twenty-First Century: Rethinking the New Legal Order Vol 2* (eds. T Tridimas and P Nebbia).

²³ Council Directive 2003/86 on the right to family reunification OJ [2003] L251/12.

Again the original proposal would have been more favourable to unmarried couples living in a stable relationship because the definition of ‘spouse’ would have extended to ‘an unmarried partner living in a durable relationship with the applicant, if the legislation of the Member state concerned treats the situation of unmarried couples as corresponding to that of married couples’ without requiring that their relationship be formally registered as a partnership under national law.²⁴ The Economic and Social Committee had lauded this approach as ‘non-married couples [would be] free to live together, support each other, secure legal recognition for, raise and educate their children, and exercise the rights and duties of parents.’ Moreover, the Committee recommended that restrictive interpretations should be avoided and called upon the Commission to monitor the transposition of this Directive into national legislation.²⁵

However, subsequently the Commission amended the Proposal and restricted the definition of family members to the traditional nuclear family because it stated that:

Given the diversity in national legislation concerning those enjoying the right to family reunification, it does not seem possible for the moment to extend the obligation to allow entry and residence beyond the spouse and minor children. There is therefore a possibility but not an obligation, as regards relatives in the ascending line, dependent adult children and unmarried partners.²⁶

Directive 2003/86 does however exclude polygamous marriages as in the case of such marriages if the sponsor already has a spouse living with him in the territory of a Member state, the Member State concerned is prohibited from authorizing the family reunification of a further spouse.

Likewise, even though the Community Staff Regulations for Community officials, that at the time of *D and Sweden v Council* had excluded that forms of partnerships may be assimilated to marriage for the purposes of allowances and other benefits to the official’s family members,²⁷ have been changed, they also make recognition of such partnerships subject to the discretion of Member States. For the current Staff Regulations as last amended in 2005²⁸, while now also extending these benefits to unmarried partners who the Regulations treats as spouses (Article 72) while treating non-marital partnerships as marriage (Article 1d), the Regulations make such treatment dependent on the non-marital partnership status being legally recognised by a Member State.

²⁴ ‘Partnership Rights, Migration and EC Law’, H Toner in *European Union Law for the Twenty-First Century: Rethinking the New Legal Order Vol 2* (eds. T Tridimas and P Nebbia) 349, 361.

²⁵ *Ibid.*

²⁶ *Ibid* 362.

²⁷ The Court at paragraph 38 had observed that: ‘Only the legislature can, where appropriate, adopt measures to alter that situation, for example by amending the provisions of the Staff Regulations. However, not only has the Community legislature not shown any intention of adopting such measures, it has even (see paragraph 32 above) ruled out at this stage any idea of other forms of partnership being assimilated to marriage for the purposes of granting the benefits reserved under the Staff Regulations for married officials, choosing instead to maintain the existing arrangement until the various consequences of such assimilation become clearer.’

²⁸ Latest amendments by Regulation 31/2005, OJ [2005] L8/1.

Conclusion

The Court's traditional or 'apologetic' (as McGlynn calls it) conceptualisation of families, is likely to prevail despite the more progressive approach of the Community's political institutions because as seen in Directives 2004/38 and 2003/86 and the Staff Regulations any departures from the 'apologetic' approach are conditional on the Member States changing national legislation in the same direction. And McGlynn perceives Member States to be generally more conservative or 'apologetic'.²⁹ So, it is unlikely that Community law will see any drastic change in the near future to the traditional confines of the notion of 'family' as epitomised by case law. This leads Toner to pessimistically conclude that:

Looking more widely, it seems clear that the question of family status is likely to become increasingly problematic. Two EU Member States ... now permit same-sex marriage, and registered partnerships of various kinds are recognised in a number of others ... Yet, some remain resolutely opposed, and the Catholic Church is becoming increasingly vocal in its opposition to any move to weaken the legal position of heterosexual marriage as the uniquely favoured (and preferably the only legally recognised) family form. The accession of New Member States will do nothing to make this an easier issue - if anything, it will deepen divisions by introducing several new Member States whose conservative views on such matters will provide a counterbalance to the trend towards same-sex partnership recognition.³⁰

²⁹ 'A Family Law for the European Union?' C McGlynn in *Social Law and Policy in an evolving European Union* (ed J Shaw) 223, 240-241.

³⁰ 'Partnership Rights, Migration and EC Law', H Toner in *European Union Law for the Twenty-First Century: Rethinking the New Legal Order Vol 2* (eds. T Tridimas and P Nebbia) 349, 369-370. See also H Toner *Partnership Rights, Free Movement and EU Law*.

FAMILY LAW IN THE EU'S *ACQUIS COMMUNAUTAIRE*: WHERE IS IT GOING?

IVAN SAMMUT

Background

In 1957 the founding fathers of the European Economic Community envisaged a legal instrument to regulate the economic relations between the Member States - hence the Rome Treaty. The ultimate aim was to establish 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured'.¹ In 1985, the Commission, published the White Paper '*Completing the Internal Market*', where it proposed an Internal Market whereby the four freedoms are complemented by the suppression of all kinds of physical barriers, technical or fiscal, which hinder the fundamental freedoms or distort competition.² The means to achieve the aims of the Community are the progressive approximation of the economic policies of the Member States together with the establishment of an Internal Market, and following the Maastricht Treaty, also, the establishment of an Economic and Monetary Union (EMU). The European Court of Justice (ECJ) in the *Schul* case explains that establishing a common market entails:³

'The elimination of all obstacles to intra-community trade in order to merge the national markets into a single market bringing about conditions as close as possible to those of a genuine Internal Market'.

The argument here is that the more the four freedoms move freely, the more affluent the EC could become. As economic treaty, the absence of any family law provisions is not surprising. However law, economic or not, is about regulating any possible relations between people and no discipline of law can exist without any link to another. Economic law, what EC is mostly about, necessitates the regulation of free movement of persons. Within this context the social dimension of the EC could not be ignored, and it is this social dimension that brought the concept of family much alive in European Law. In *Commission*

¹ Art. 7a of the Treaty of Rome (now Art. 14(2) EC).

² Communication from Commission to the Council on the completion of the Internal Market of June 28, 1985, COM (85) 310 final.

³ Judgement of 5.5.82, in case 15/81, *Schul v. Inspecteur der Invoerrechten en Accijnzen*, [1982] ECR 1409.

v Germany [1989] as well as in other cases the European Court of Justice acknowledged the social importance of the family by stating that ‘respect for family life is one Fundamental right.’⁴

This commitment to family life, if not to family law has over the years found its place in some European law provisions and thus family law affects EC law as it moved beyond from being just economic law. The major departure from economic law happened with the introduction of the Treaty on European Union (TEU)’s Justice and Home Affairs provisions which following the Amsterdam Treaty, provisions relating to judicial cooperation in civil matters, an area of direct interest to the concept of European Family law were communauterised.⁵ Further to this, one should not forget soft-law, that is, non-binding provisions which provide evidence of an EU interest in family law.⁶ All measures, whether directly related to the *acquis* or not, contribute towards the existence of an ‘EU family law’. The above mentioned recent developments in the Treaties and the EU Charter on Fundamental Rights have fuelled this debate.⁷

This paper seeks to contribute to this discussion. It submits that until recently it has been too ambitious and imprudent to justify the label of ‘EU family law’. The law relating to free movement of persons is mainly economic law and it is only as a consequence that one cannot separate the social aspect from the economic concept. The first part of this paper tries to examine how far the social aspect has led to the development of ‘family life’ concepts at EC law level. However although it might have appeared to be imprudent up to a few years ago, the developments brought about in the arena of the free movement of persons following the introduction of judicial cooperation in civil matters and the subsequent developments became a reality. The second part of the paper deals precisely with the major developments in this area.

While there is a general agreement among academics and most mainstream European politicians that the EU should be built around human rights, it may not be the case when one comes to examine to what extent human rights should affect family life and family law at European level. The next part seeks to address the inevitable argument as to what extent should human rights affect family law.

Finally, family law is considered as the paradigmatic example of a subject which is unsuitable for such harmonisation. The two most important reservations against the harmonisation of private law in general have always been the so-called “cultural constraints” argument, and the lack of clarity concerning the EU capacity with regard to the overall harmonisation of private law. The last part of the paper will seek to put this argument within the context of the on-going project vis-à-vis European private law.⁸

⁴ Case 249/86 at paragraph 10. Other examples include Case 36/75 Rutili [1975] at paragraph 32.

⁵ Remien, ‘European private international law, the European Community and its emerging area of freedom, security and justice’ (2001) 38. *C.M.L.Rev.* 53.

⁶ See Hervey, ‘A gendered prospective on the right to family life in European Community life’ in Neuwahl, Rosas (eds.), *The European Union & Human Rights* (Martinus Nijhoff, 1995). p.221.

⁷ See McGlynn, ‘Families & the European Charter of Fundamental Rights: progressive change or entrenching the status quo?’ (2001) 26.*E.L.Rev.* 582.

⁸ See Antokolskaia “The Harmonisation of Family Law: Old and New Dilemmas”, (2003) 11.*ERPL*, p. 28-49.

1. The Concept of a 'Model European Family' in EC Law

Not surprisingly there is no definition of 'family' in the Treaties and this makes the concept of family very difficult to define particularly at EC level. The meaning attributed to a 'family' depends from which sociological, anthropological, historical as well as religious perspective you look at it. Family law has traditionally been perceived as the legal discipline that establishes the legal rights and duties of family members, particularly those between husband and wife living with their children. This traditional function of marriage is changing. Considering the number of marital breakdowns (separation/divorce) and the introduction of new legal concepts alien to the traditional family system such as registered partnerships or same-sex union, the concept of family law in the EU has evolved to become more of a remedial one intending to protect the weaker party. This means that there are substantial differences between the family laws of several Member States of the European Union.

One possible starting point, if one sought to arrive at a legal definition of family at EC level, would be to look at the constitutional law of some of the Member States. For example under the Portuguese Constitution, family is seen as a 'fundamental social institution deserving the support of the State' while the Greek Constitution looks at Family law as a 'foundation stone for the preservation and the advancement of the nation'.⁹ As the traditional family concept still forms the back-bone of most of the family law of EU countries, the ECJ and the EC legislator take this concept as the basis for European family law and also consider new developments in some Member States.

The first foundations of a European family law can be said to be composed of soft-law provisions.¹⁰ These have been formulated mainly as part of a campaign aimed at further equal opportunity, in particular to promote the reconciliation of work and family life. More recent examples of soft-law can be taken to be the workings of the Commission on European Family law (CEFL) to be discussed later on.¹¹

The impact of European hard-law on the family appears clearly in the areas concerning the free movement of workers, social security and pensions,¹² conditions of employment of Community staff employees,¹³ and equal treatment in employment between men and women.¹⁴ Both soft-law and hard-law mentioned above have one thing in common. They do not intend to regulate family *per se* but have been subsidiary to the successful completion of the 'main building' - the EC Common Market. As a result these are a mere bundle of *ad hoc* measures which do not support a coherent approach in this area as they are neither comprehensive nor coherent in some aspects.

Complementing the above is the case law of the European Court of Justice as it has contributed to the promotion of the traditional idea of family. In some cases such as in

⁹ Lowe, *Bromley's Family Law* (Butterworths, 1998), p.1.

¹⁰ Di Torella and Masselot 'Under Construction: EU family law', (2004) 29. *E.L.Rev.* 32.

¹¹ Please refer to <http://www.law.uu.nl/priv/celf>

¹² Ackers, *Senior Citizenship? Retirement, Migration and Welfare in the European Union* (Policy Press, Bristol 2002).

¹³ Berthou 'Le mariage, les partenariats et la CJCE: ménage à trois' (2002) 5/6 C.D.E. 679-694.

¹⁴ O'Leary, Resolution by the Court of Justice of disputes affecting family life', Hervey, O'Keefe (eds.), *Sex Equality in the European Union* (Wiley, 1996).

Ulrich Hoffman v Barmer Ersatzkasse the ECJ merely acted upon some assumption in formulated policy.¹⁵ However in other cases, the Court has relied on the European Convention on Human Rights and its relevant case law. The Court's legal basis has been Article 6(2) TEU which states that the EU is committed to 'respect fundamental rights as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms'.¹⁶

Regulation 1612/68 established the right of workers moving within the Union to be joined by members of their family.¹⁷ The family was divided into two elements. Close family members enjoyed an ambiguous right to join the worker, whilst host states were encouraged to facilitate the admission of other, more removed family workers.¹⁸ The above has been reinforced with Directive 2004/38/EC to come into force on the 30th April 2006. The reference to the worker's spouse was considered by the ECJ in *Netherlands v Reed*,¹⁹ which concerned a claim for a residence permit from a UK national who was the unmarried opposite-sex partner of another UK national working in The Netherlands. On the occasion, the Court declined the opportunity to decouple the term 'spouse' from marriage, although it found another hook on which to give the right of residence for Reed. As Dutch nationals could be joined in The Netherlands by unmarried partners, then this prerogative had to be extended to all EU migrant workers. The Court justified its reference only to marital relationships due to the lack of 'general social development' amongst all Member States towards assimilating couples to spouses.²⁰

In *Grant* after making an analysis of the principle of equality, the ECJ concluded that 'in the present state of the law within the Community, stable relationships between two persons of the same sex are not regarded as equivalent to marriages or stable relationships outside marriage between persons of opposite sex'.²¹ More recently the ECJ revisited this issue in the case of *D. D.*, a Swedish national was living with his partner under the title of Registered Partnership. According to Swedish law this was almost equivalent to marriage. When he became a Council official he applied for a grant under the Staff Regulations and this was refused on the grounds that a registered partner is not the same as spouse.²² As in the previous case, the ECJ insisted that there was no breach of the principle of equal treatment because marriage and registered partnership are two distinct legal concepts.²³ Finally the only case involving transsexuals is *P. v. S.*²⁴ In a path breaking decision, the ECJ held that the Equal Treatment Directive had to be interpreted to cover the unfavourable treatment of transsexual people.

¹⁵ Case 184/83 [1984].

¹⁶ Article I-7(2) of the Draft Constitution states that 'the Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms' (CONV 820/1/03).

¹⁷ See Article 10 of the Regulation.

¹⁸ Bell 'Holding Back the Tide? Cross-Border Recognition of Same-Sex Partnership within the European Union', (2004) 12.*ERPL*, p. 613.

¹⁹ Case 59/85 [1986].

²⁰ Di Torella and Masselot 'Under Construction: EU family law', (2004) 29. *E.L.Rev.* 39.

²¹ Case C-249/96 [1998].

²² Council Regulation 781/91 [1998]. The Regulation permits payment of the allowance to (a) married couples, (b) an official with dependent children, regardless of marital status and (c) by reasoned decisions of the pointing authority, an official who does not fulfil (a) or (b) but assume family responsibilities.

²³ Joint cases C-122/99 & C-125/99.

²⁴ Case C-13/94 [1996].

The above has been an interpretation to legal instruments that are not family law instruments as such but they affect the person's family nonetheless. The development in the family law of the Member States have emphasised the need for a more coherent approach at EC level and as a result the *status quo* just described is changing. A major opportunity for change arrived with the Treaty of Maastricht in 1992 and was further consolidated by the Treaty of Amsterdam five years later. By broadening the competences of the EU and as a result of creating new competences under the Pillar of Justice and Home Affairs that are not just economic in nature, the terrain was right for a more 'proper' EU family law to develop, and this was mainly thanks to 'judicial co-operation in civil and criminal matters'.

2. Towards an EU Family Law?

The new developments provided a legal tool to introduce provisions in the field of private international law and as a result also more specifically on family law. This brought about the drafting of the Convention on Jurisdiction and Recognition and Enforcement of Judgments in Matrimonial Matters (Brussels II Convention).²⁵ This Convention deals with proceedings relating to divorce, legal separation, marriage annulment and disputes concerning parental responsibility. It provides for the recognition and enforcement of such judgments. This Convention is modelled on the 1968 Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters and it also serves as its complement as it deals with issues that were left out of the first Convention known as Brussels I.²⁶ The Brussels II is meant to be a private international law instrument and not one intended to approximate the family laws of the Member States. However, needless to say, it represents a considerable step towards the creation of an embryonic EU family law.

Then came the Amsterdam Treaty which brought radical changes in relation to Pillar III activities, most important of which relocated the legal framework for immigration and control and other free movement policies as well as judicial co-operation in civil and commercial matters into Pillar I realm of Community competence. As a result Title IV now embodies what is commonly referred to as the Communitarisation of these aspects of the old Third Pillar.²⁷ Article 2 EC now refers to an 'area of freedom, security and justice', to be created by 2004, and accordingly gives powers to the European Community to adopt relevant measures. During the Tampere European Council in 1999, it was declared that such an area should be at the very top of the political agenda.²⁸ Article 2 EC is further consolidated in Article 61(c) and 65 EC which enable the Council to adopt measures in the areas of judicial co-operation in civil matters which have cross-border implications. These provisions have been used to cover areas of family law and have created a basis for more structured approach in this area. This first step resulted in the communitarisation of the Brussels II Convention and it now became the Brussels II Regulation which specifically deals with family matters.²⁹

²⁵ See Beaumont 'Brussels Convention II: a new private international law instrument in family matters for the EU or the European Community?' (1995) 20 *E.L.Rev.*268.

²⁶ This Convention was subsequently communitarised by Regulation 44/2001/EC.

²⁷ See Stalford 'Regulating family life in post-Amsterdam Europe' (2003) 28 *E.L.Rev.*39.

²⁸ October 15-16, 1999, Tampere European Council.

²⁹ Council Regulation 1347/2000. This Regulation came into force on March 1, 2004 and does not apply to Denmark.

The 2001 Regulation subsequently served as the basis for a new Council Regulation (EC) No. 2201/2003 (Brussels IIbis) that amended and repealed the former.³⁰ The purpose of this Regulation is to bring together in a single document the provisions on divorce and on parental responsibility. Among other matters, it establishes the automatic recognition of judgments on rights of access, which formed part of an initiative presented by France in 2000. Priority is given to the child's right to maintain normal relations with both parents. The child will have the right to make his or her views known on all aspects of parental responsibility, having regard to his or her age and degree of maturity. The Regulation applies to civil proceedings relating to divorce, separation and marriage annulment, and to all aspects of parental responsibility. Parental responsibility refers to the full set of rights and obligations in relation to a child's person or property. In order to ensure equality for all children, the Regulation covers all judgments on parental responsibility, including measures to protect the child, independently of any matrimonial proceedings. The Regulation does not apply to civil proceedings relating to maintenance, which are covered by Council Regulation (EC) No 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

To complete the picture, a further measure was taken namely Council Decision 2003/93³¹ authorising the Member States collectively to sign in the interest of the EU the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children. Together these measures form the first binding platform of EU measures directly addressing issues related to the family.³²

The new approach towards family law not only applies to people living inside the EU but it has been extended to people that are coming from outside the EU.³³ Although based on an 'old fashioned' model, Council Directive 2003/86/EC on the right to family reunification is the confirmation of the 'extension' of the approach.³⁴ This Directive confers a right on a third country national holding a residence permit issued by a Member State for a period of validity of one year or more who has a reasonable prospect of obtaining the right of permanent residence, to request reunification with his or her family members. Once reunited, the family members are able to access the educational system and are allowed to seek employment or pursue training on the same footing as EU migrants.

According to McGlynn, the Treaties of Maastricht and Amsterdam set the seeds for EU and EC competences in this area.³⁵ These seeds have now been taken up by the ECJ which is interpreting new cases in light of principles which have more in common with domestic family law rather than principles of EU law. It could be argued that this embryonic EU family law has already created more problems than it has solved. This has been particularly evident with regards to children and to atypical forms of families due to poor attention given to their regulatory regime or to lack of consistent definitions. The main problem is that such

³⁰ Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

³¹ Council Decision 2003/93 [2003] O.J. L48/1.

³² See Stone, 'The Developing EC private international law on family matters', (2001) 4. *C.Y.E.L.S.* 373.

³³ Di Torella and Masselot 'Under Construction: EU family law', (2004) 29. *E.L.Rev.* 45.

³⁴ Council Directive 2003/86/EC of 22nd September 2003 on the right of family reunification.

³⁵ See McGlynn, 'The Europeanization of family law' (2001) *C.F.L.Q.* 35.

definitions are neither based on common values nor ‘kept together’ by coherent strategy. This latter problem brings up the issue related to a human rights approach for family law issues encapsulated by the EU Charter of Fundamental Rights and also the European Convention on Human Rights (ECHR).

3. European Family Law and Human Rights

The spontaneous harmonisation of family law is constantly evolving in the form of ongoing convergence and as a result of the harmonising effect of the case law of the European Court of Human Rights in Strasbourg and the ECJ. Article 8 of the ECHR deals with the protection of family life, Article 12 is about the right to marry and to establish a family and Article 14 prohibits discrimination. The Strasbourg Court has developed the concept of family rights using the so-called ‘dynamic interpretation’ of the Convention. A ground breaking case is the *Marckx* case where it was held that Belgian law that provides that an illegitimate child acquires legal filiation links with his/her mother, not by virtue of birth, as was the case for a legitimate child, but via recognition by the mother, violated Articles 8 and 14 of the Convention.³⁶ This case meant that the maxim ‘*mater semper certa est*’ became the rule for all the countries of the Council of Europe. In 2002 another important achievement was attained in *Goodwin v the United Kingdom*³⁷ and *I v the United Kingdom*.³⁸ The Human Rights Court finally acknowledged that the refusal to provide legal recognition to the new gender identity of post-operative transsexuals violates both Articles 8 and 12 of the Convention.

The ECHR is complemented by the Charter which is now also incorporated in the draft Constitution. This document consolidates and ‘makes visible’ a list of civil, political, economic and social rights to which the Union is committed. It contains provisions which grant rights to the family *per se* and not as part of other issues as was the case with what was discussed earlier on in this paper³⁹ or as part of the harmonisation process of judicial co-operation. More specifically, Article 7 establishes the right to respect for private and family life and Article 9 refers to the right to marry and establish a family.

The ECJ also plays its role by interpreting Community law in the spirit of the above. For example in *Baumbast*⁴⁰ the Court found that a Colombian national married to a German and living in the United Kingdom could remain in the UK as she was caring for the couple’s children who were enjoying their right to education pursuant to Article 12 of the Regulation 1612/68. In *Carpenter* a Philippine national was refused leave by the British authorities to remain in the UK as she had overstayed the period of residence that she was granted before marrying a UK citizen.⁴¹ Although she could not enjoy the traditional rights of being married to a community national as her husband was British and living in the UK and so there was no community element, the ECJ was willing to support her claim as her expulsion would be detrimental to their family.

³⁶ *Marckx v Belgium* Judgement of 13 June 1979, Series A, no 31.

³⁷ *Goodwin v the United Kingdom*, Decision of 11th July 2002.

³⁸ *I v United Kingdom*, Decision of 11th July 2002.

³⁹ See Part II of this paper.

⁴⁰ Case C-413/99 [2002].

⁴¹ Case C-60/00 [2002].

Like private law in general, family law is being developed on a piecemeal basis, a number of global and European family law conventions alongside other instruments and courts' interpretation. This has led to a growing layer of a common core of family law, mainly in the areas directly linked to a human rights issue. The legislative activity in both private international law field as well as substantive family law is progressively intensifying.⁴² The more family law develops the more it is being looked upon from a human rights perspective. Sometimes this argument has been used to such an extent that authors in favour of further European family law development argue that the human rights law itself is not adequate to provide for deeper development of family law. For example Masha Antokolskaia, one of the active participants in the International Commission on European Family law (CEFL) to be discussed in the last part of this paper, argues in the *European Review of Private Law* that it is rather a disappointment with respect to the protection of the family rights in the EU that the Charter has failed to incorporate the right to dissolve marriage.⁴³ She says that she does not know whether this was a deliberate omission or a mere oversight and she believes that the incorporation of such a right would not be superfluous as this would have meant in her opinion that Malta would have to amend its legislation "to fall in line with its accession obligations".

While one could acknowledge that human rights play a very important role in the formulation of family law in the EU and its role should be encouraged, stretching the meaning of human rights to satisfy the needs of some academics or politicians vis-à-vis family law could be dangerous and undesirable. Human Rights should never be used to include personal agendas rather than objective human rights that would be objective fundamental rights to any individual irrespective of his country, culture or religion. While when examining the scope of a potential set of European family law principles one would have to address the cultural restraints argument, it would be to go too far to stretch such a discussion at human rights level as this could set the machinery in motion for Hooke's law to apply and it would bring an end to such an interesting project.

4. Methodological Aspects of Harmonisation of Family Law

If one assumes that family law harmonisation is desirable and is to proceed, then the methodological aspect of how this is to be achieved has to be examined. 'Methodos' is the Greek notion of explaining 'the way to something', the systematic procedure to reach a certain goal - in our case the harmonisation of family law.

As in most harmonisation attempts, comparative law is a starting point. Such an exercise cannot be restricted to the process comparing contrasting legal principles and trying to identify common concepts with the aim of arriving at an acceptable compromise between the converging views. If this were to happen, the distinction that exists in reality between the law of obligations in general and family as such would not be recognised. Family law is about personal relationships and not just commercial transactions. In other words with regard to family law, it makes more sense to adopt a more functional approach than in other fields of law. It is important to examine what the underlying problem is that a certain legal provision is aimed to redress.

⁴² Antokolskaia "The Harmonisation of Family Law: Old and New Dilemmas", (2003) 11. *ERPL*, p. 28-49 at p. 29.

⁴³ *Ibid.* p. 36.

Let us take an example to illustrate this. The possibility of premarital contracts to regulate the economic consequences if divorce is a hotly debated topic in the proceedings of the CEFL.⁴⁴ A country's treatment of the issue can be fully understood only against the background of its matrimonial property and spousal support regimes. Even if one finds that spouses are free to agree upon a regime of separate property, it is possible that a country's courts may provide relief outside family law that circumvents the agreement, yet avoids any overt control of its contents. It is a well-known longstanding tradition of Anglo-American courts, which make use of trust doctrines when family law does not provide a suitable remedy. In other countries fictitious employment contracts or partnerships are popular tools to compensate wives who helped build up their partners' business and find themselves without any legal title to the proceeds when it comes to divorce.⁴⁵

There are also significant differences between the common law and the continental legal system. In the common law tradition, there are few rules for relationships in intact family. Instead the law focuses on conflict situations. In contrast, the continental systems tend to set up abstract rights and duties for intact family, although it is perfectly clear for continental lawyers, too, that they come into play only when the personal relationship is no longer functioning. The differences in practice are, accordingly, not as they may initially seem. Another salient characteristic of common law statutes is their use of legal definitions, something unknown to continental statutes. When developing uniform rules that are to be applied by persons from different legal backgrounds who may associate different meanings to a term, such legal definitions might prove extremely helpful.⁴⁶

Another point to discuss is the amount of discretion given to the courts. If for example, one were to examine the financial consequences of divorce, according to English law the court may make financial orders, having regard to a number of factors, which permit a case by case analysis. Once again the continental legal systems show a different picture. As far as matrimonial property regimes are concerned, they all employ hard and fast rules, defining exactly what goods have to be evaluated, and what the share of each spouse will be.

Having laid out the importance of a functional approach towards the harmonisation of family law it makes sense to examine two different approaches to the problem of harmonisation, the 'common core' and the 'better law' methods. The term 'harmonisation' seems to suggest that the harmonised rules will be derived from existing laws rather than invented by the drafters. This can only be true to a limited extent. The drafters have basically three choices. They can make use of a rule that is common for all or most of the relevant jurisdictions. They can select a rule that represents a minority or even only one jurisdiction. They can formulate a new rule themselves.

The 'common core' method seems easiest to use, because it makes justifying the choice of a particular rule very simple. The common rule extracted in this way is then used for elaborating the harmonised law. This method has its own disadvantages, for example a common denominator on the level of functional equivalence is also not always found.

⁴⁴ See Schwenger 'Methodological Aspects of Harmonisation of Family Law' from Boele-Woelki (ed.) *Perspectives for the Unification and Harmonisation of Family Law in Europe*, EFL 2004, p. 143.

⁴⁵ Ibid. p. 146.

⁴⁶ Ibid. p. 147.

However the experience of drafting harmonised private law for Europe has shown that the ‘common core’ method, extensively used in the elaborating of the American Restatements, can be less relied upon for drafting the European Principles.⁴⁷ While the drafters of the American Restatements could in principle restate the common core of the existing case law, the main difference is that the drafters of the Principles could not do so because of divergences in the laws of the nations within the EU itself.

On the other hand, the application of the ‘better law’ method is much more complicated than of the ‘common core’. Although the former leaves more room for creative drafting, it invokes the troublesome problem of justifying the choices made. The problem with this method is that the potential drafters of a set of European Principles are not necessarily supported by any political authorisation but their only source of authority is their academic reputation. This means that any exercise based on this method is likely to undergo some changes in the future if it is to be transformed from a mere academic exercise to a politically supported process.

The above is meant to be a brief mental journey that could show how the unifying process in family law could proceed. At this point several important questions, such as what kind of instrument is being aimed at - a convention, a regulation, a directive. Any unification process is likely to employ a comparative approach followed by an interdisciplinary discussion. Finally any process has to deal with important value issues and must seek to reconcile where possible contrasting values as well as make room for certain divergences to prevail in order to support contrasting values.

5. Towards a ‘Ius Commune’ in Family Law?

With the ongoing debate about the European Civil Code project and the ongoing work of the Common Frame of Reference known as the CFR-Net, the possibility of some sort of a European civil code is being very actively debated and something tangible could come out of the discussions.⁴⁸ While this project is primarily aimed at contract law, family law has not escaped untouched though it does not form part of the workings of such Net. This has been mainly thanks to the work of the International Commission on European Family law (CEFL) which was established on 1st September 2001.⁴⁹ The idea of a CEFL came from Katherina Boele-Woelki from the University of Utrecht and from Walter Pintens from the Catholic University of Leuven. This Commission came as a logical response to recent developments both in the field of EU activities and the events surrounding European private law. The aim of this CEFL is not just an academic comparative study but to undertake practical harmonisation activities, most notably the drafting of non-binding Principles of European family law.⁵⁰ The establishment of the CEFL is based on a scientific initiative and therefore its members are totally independent of any organisation or institution.

⁴⁷ Antokolskaia ‘The Better Law’ Approach and the Harmonisation of Family Law’ from Boele-Woelki (ed) *Perspectives for the Unification and Harmonisation of Family Law in Europe*, EFL 2004, p.160.

⁴⁸ The Net organised by the Commission’s DG Sanco started its work to produce a study through experts and consultations with interested parties on such a project for civil law and in particular for contract law. The work started in January 2005 and the Net is expected to last until 2007 and the first implementation will not take place until 2009 at the earliest.

⁴⁹ Please refer to <http://www/law.uu.nl/priv/celf>

⁵⁰ Antokolskaia “The Harmonisation of Family Law: Old and New Dilemmas”, (2003) 11. *ERPL*, p. 28-49 at p. 29.

Consequently, the comparative research-based drafting of common Principles is a purely academic matter.

The CEFL is composed of the Organising Committee and the Expert Group. The former is designated as a co-ordinating and organising body, while the latter includes members from almost all European countries.⁵¹ With respect to contract law, before the establishment of the CFR-Net, the European Commission came up with four options namely i) to abstain from any deliberate harmonisation attempts and to rely on spontaneous harmonisation; ii) to draft a non-binding set of Principles; iii) to improve the existing European legislation; and iv) to start elaborating European private law. The idea behind the CEFL is that what is happening vis-à-vis contract law should also be extended to family law.

The CEFL has been confronted with the above choices and has deliberately opted for the elaboration of a set of non-binding Principles of European Family law and this only in the areas selected by CEFL, as being the most suitable for harmonisation.⁵² It is important to stress that the ambitions of the CEFL do not go any further than to promote voluntary ‘bottom-up’ harmonisation of some institutes of family law. ‘Top-down’ unification with the aid of binding instruments is not intended. This view is clearly expressed by K. Boele-Woelki, in her programmatic article on the Commission on European Family Law, where she wrote that the option of “*drafting a binding uniform family law for the whole EU [...] is much too far-reaching and is neither considered to be feasible nor desirable at the present time*”.⁵³

The subjects chosen for discussion are mainly grounds for divorce and the maintenance obligations of former spouses. These were mainly chosen because they are the subject of legal instruments already enacted at European level. The drafting method so far included the drawing up of a questionnaire with 105 detailed questions from a comparative perspective. This is being followed by a set of discussions and the final stage would see the drafting of the Principles.⁵⁴

The most important argument in favour of the harmonisation of family in Europe is the increase in the number of cross-border family ties. The number of bi-national marriages is growing constantly. In Europe in general about 15% of those entering marriage are of different nationalities, often of European states.⁵⁵ The same is true for other relationships, be they same-sex or heterosexual. In addition to this one also have to take into account the increase in the mobility and migration of people within Europe. In fact as it has been outlined earlier on in the Paper, this is one of the main reasons why today we are talking of a European Family Law. Other advantages brought about by a harmonised family law in Europe include the lack of legal certainty and the costs associated with the determination of the applicable law in the case of cross-border conflict.

⁵¹ For more information please refer to <http://www.law.uu.nl/priv/celf>

⁵² Boele-Woelki, ‘Comparative Research-based Drafting of Principles of European Family Law’ in Faure, et al. (eds), *Towards a European Ius Commune in Legal Education and Research*, (Ius Commune Europaeum) 40, Intersentia, Antwerpen 2002 p.180.

⁵³ Ibid p. 179.

⁵⁴ See <http://www.law.uu.nl/priv/celf>

⁵⁵ Detloff ‘Arguments for the Unification and Harmonisation of Family Law in Europe’ from Boele-Woelki (ed) *Perspectives for the Unification and Harmonisation of Family Law in Europe*, EFL 2004, p. 37.

Three possible main arguments could be brought against the harmonisation of family law. One is about the lack of clarity concerning the EU's capacity with regards to the overall harmonisation of private law. Even those scholars who strongly opposed these arguments in relation to the economically-related fields of private law often consider these reservations to be valid with respect to family law.⁵⁶ While a comprehensive analysis of all possible legal titles is beyond the scope of this paper, one could perhaps mention that the amendments brought about by the Amsterdam Treaty, in particular those in relation to the free movements of persons, do facilitate any possible harmonisation in this field. Particular reference could be made to Article 65EC which provides that in order to establish progressively an area of freedom, security and justice, the Council shall adopt measures in the field of judicial cooperation in civil matters as provided in Article 65EC.⁵⁷ This Article, amended by the Amsterdam Treaty, leaves the door open to further harmonisation, in connection to the field of judicial cooperation in civil matters and having cross-border implications. Article 65EC in conjunction with Article 67 EC could be interpreted as a legal base for the elimination of those obstacles to the good functioning of civil proceedings, if necessary, by promoting the compatibility of procedural rules.⁵⁸

A second important argument involves the cultural constraints.⁵⁹ In fact this has been one of the reasons why family law remained out of bounce for harmonisation.⁶⁰ It has to be acknowledged that there are considerable differences between the family laws of EU countries and while some jurisdictions are open to same-sex marriage⁶¹, registered partnership⁶² and other forms of so called 'family structure', other countries adhere to the strict traditional sense of 'family structure' and do not accept concepts such as divorce⁶³ and abortion⁶⁴. Any set of European family law principles would have to address this legal situation very carefully by respecting the various contrasting positions and at the same time contribute towards the free movement of persons. It would be very dangerous for any document at European level to try and impose one system or one policy over the other. Family law is essential to respect the general belief in the particular Member State or region and the differences do not make one system in any way better or superior from another. If European law attempts to impose principles from one system over the other it would be self-defeating. On the other hand if it avoids any controversies and respects each country's belief, it is very likely to be ancillary to the economic law regulating the free movement of persons and would contribute towards the achieving of a true internal market. Unfortunately here one would have to note that such an issue could be very easily hijacked by lobbyists who rather than having the aims of the internal market, would be driven by personal agendas and anyone who has at heart such a project must do his/her utmost to be as objective as possible.⁶⁵

⁵⁶ See Basedow, 'Codification of Private Law in the European Union: the making of a Hybrid' 1. *ERPL*. 2001 p.35-37.

⁵⁷ See Article 61(c) EC.

⁵⁸ Lopez Rodriguez, *Lex Mercatoria and Harmonisation of Contract Law in the EU*, Djøf Publishing, Copenhagen, 2003. p. 3., p.258.

⁵⁹ Antokolskaia, op cit p. 37.

⁶⁰ See Boele-Woelki op cites p.180.

⁶¹ Namely The Netherlands, Belgium and Spain.

⁶² The Nordic countries.

⁶³ Malta.

⁶⁴ Malta and Eire.

⁶⁵ See Meuders-Klien 'Towards a European Civil Code on Family? Ends and Means' from Boele-Woelki (ed) *Perspectives for the Unification and Harmonisation of Family Law in Europe*, EFL 2004, p. 105.

Finally this brings up the issue of the Europeanization of the family with regards to the principle of subsidiarity. Article 5 EC falls short of defining precisely what the scope of Community's competence is, or the areas over which it has sole competence to the exclusion of the Member States, or the areas over which it shares competence with the Member States. Any development of family law at European level has also to address the balance of what should best be left in the hands of the Member States and what should be best Europeanised. While there are contrasting opinions to what extent the principle of subsidiarity should affect the development of family law at European level⁶⁶, it is a fact that European family law would help cross-national family breakdown and would be directly linked to the operation of the free movement of provisions which are distinctively of Community concern. Thus the subsidiarity principle will unlikely hinder any measure that would be just, appropriate and neutral vis-à-vis the divergences in the Member States' family law.

⁶⁶ See Stalford 'Regulating family life in post-Amsterdam Europe' (2003) 28 *E.L.Rev.* p.51.

**EDUCATION AND
KNOWLEDGE FOR
DEMOCRACY AND
CITIZENSHIP**

TOWARDS EQUAL OPPORTUNITIES: AUTOCHTHONOUS AND IMMIGRANT FAMILIES IN A SECULAR EUROPEAN SOCIETY

CHRISTIANE HELLERMANN*

The United Nations once dealt only with Governments. By now we know that peace and prosperity cannot be achieved without partnerships involving Governments, international organizations, the business community and civil society. In today's world, we depend on each other. Kofi Annan, Secretary General, United Nations¹

I. The State and the Civil Society

The Family and the Civil Society

Civil society is about what happens to us when we leave our family and go about our own lives. (Tester 1992: 8)

First of all, we have to question Tester's quote that reproduces the historical dichotomy of *public* versus *private* sphere. Contemporary scholars from various disciplines (e.g. social sciences, history, cultural studies) point out again and again the shortcomings of bi-polar thinking in general, calling for more differentiated perspectives - also regarding the private - public divide/separation (cp. Fraser 1997).

Is the family not an integral - or even foundational - part of society?

Is the family, and the way in which family life is constituted, not a social practice?

After all, the existence of this Project can be taken as sufficient evidence of the fundamental importance and role of family in society. Consequently, we follow in our understanding scholars like Jean Cohen and Andrew Arato (1992) who refer to the family as a 'core component' (1992: 538) and 'key institution' (1992: 631) of civil society.² To see the family

*I would like to thank Dr. John Grech for his thoughts and suggestions during the writing of this paper.

¹ <http://www.un.org/issues/civilsociety/index.asp>, accessed April 15th, 2006.

² However, in strong opposition to thinkers like Hegel and Habermas.

as a socio-political institution means to acknowledge that it is part of the public - and therefore *political* - sphere.

The Public Sphere

It is vital to distinguish within the public sphere three important political sectors: 1. the state with its various (governmental) political structures and institutions, including policies, 2. the economic sphere, the market, - and 3. the civil society, sometimes referred to as the ‘third’ or ‘tertiary’ sector³. Civil society is founded and shaped by many players including NGOs, social movements, churches and religious groups, neighbourhood organisations, environmental groups, migrant support groups, charity groups etc. - and the family. However, we find a lot of controversy regarding the definition of the notion of ‘civil society’ and regarding the question, who is (not) part of it.⁴ For the time being, and for being able to proceed to the core topic of my paper and the Project, I will follow Antonio Gramsci (1971) and Alain Touraine (1997) as a starting point: Both thinkers suggest the definition that actors in civil society are non-governmental and independent from major economic institutions and industrial tycoons. Nevertheless, civil society and the state are linked in democracy, as Touraine (1997) shows. This is reflected also in Kofi Annan’s quote at the beginning of my paper. Touraine emphasises repeatedly the importance of social actors and movements in democracy: their action can influence the state (also, but not only, via the political representatives), sometimes also by putting pressure on it. Thus, social movements - and an active civil society in general - help to build up and strengthen bottom-up structures. By doing so, they reinforce democracy (cp. Touraine 1997: 32; 1981).

Diversity and the Inclusive Society

The division of the public sphere in three separate but interconnected sectors, as explained above, suggests that churches and religious groups - both as institutions and as social practice - are part of the civil society, and not of the state. Consequently, religions and religious issues cannot and should not be of governmental concern - at least not after the state having granted a fundamental freedom for religious beliefs, practices and expressions for everyone. Thus, the government/the state and all its affairs remain secular, following ideas and achievements of the Enlightenment and the French Revolution. The civil society then offers space for diverse movements, interests groups and activities, including religious groups, to express themselves, to negotiate between each other, and when necessary, seek to democratically alter practices in the state or the market.

The state, in accordance with relevant meta-governmental/supra-national institutions like the EU and the UN, has to *promote* and *guarantee* the diversity of any opinion, action, life-style, and religious and spiritual beliefs - without giving preferential treatment to one or other group(s). Diversity in all aspects of life - and thus, individual freedom - has to be the main aim for society, supported actively by the governments/states and multiplied by the actors within the civil society. Individual freedom can only be freedom for *everybody* as long as the individual’s and community’s expressions and practices do not interfere, or limit, the freedom of other persons or groups. The old slogan: “Freedom is always and

³ Cf. <http://www.lse.ac.uk/collections/TSEP/faqs.htm>, accessed April 15th, 2006.

⁴ See e.g. http://en.wikipedia.org/wiki/Civil_society, accessed April 15th, 2006.

exclusively freedom for the one who thinks differently”⁵ is a valuable signpost for any society aiming to encourage the political participation of all its members in the foundation of a vibrant civil society. Such a society is open and inclusive by accepting and incorporating difference and diversity. An inclusive society grants fair and equal opportunities to all its members, irrespective of their different backgrounds and life-styles. Yet, to enable equal opportunities we have to support different people differently, as relevant anti-discriminatory studies suggest (e.g. Husband, 1998).

However, with policies and political action, the nation-state (in accordance with the EU) is setting the legal, political, and social framework, in which civil society can take place - and people can live and *act politically*. In the context of this Project, this calls for political action and implementation of policies regarding families, migrants, and access to social services etc, as will be developed in the following section of this paper.

II. Immigrants and Families

Fundamental Rights and Social Support

Discourses on social rights and support systems for immigrants are often linked - explicitly or implicitly - to values based on religious beliefs (keywords are ‘moral’, ‘charity’, ‘hospitality’ etc.). This occurs throughout the European Union but seems to be quite predominant in Southern Europe including Malta.

Instead of basing (fundamental) rights and obligations, as well as access to support systems for (immigrant) families on a religious rationale, I suggest an approach that is not linked - directly or indirectly - to one or various religion(s) but to principles, ideas and values associated with a democratic, inclusive, non-discriminatory state. This approach would be based on fundamental Human Rights (e.g. Children’s Rights, Women’s Rights, Men’s Rights), constitutionally granted to *all* members of European society, the traditional population and the newcomers. These rights are inalienable for everyone in the family, as a whole and for each and all of its members, irrespective of gender, age, beliefs, work place etc.

The conventional notion of ‘civil society’ was conceptually framed as secular. The same is true of the post-Enlightenment state. Civic values are based on human rights, obligations and duties, which are of political concern to every member of a society. Religious and spiritual beliefs become a private and personal practice. Nonetheless, the state and the civil society jointly guarantee and protect religious freedom as a basic right of each individual and community. Religious beliefs and practices can be expressed and lived in public, and they can be an active part of civil society, as stated above. Understanding and conceptualising European societies as democracies with an integral and active civil society

⁵ Rosa Luxemburg, 1940 [1918]. Original quote in German: “*Freiheit ist immer die Freiheit des Andersdenkenden*” - literally: “Freedom is always the freedom of dissenters”, usually cited as “Freedom is always and exclusively freedom for the one who thinks differently”. Full quote: “Freedom only for the supporters of the government, only for the members of one party - however numerous they may be - is no freedom at all. Freedom is always and exclusively freedom for the one who thinks differently. Not because of any fanatical concept of ‘justice’ but because all that is instructive, wholesome and purifying in political freedom depends on this essential characteristic, and its effectiveness vanishes when ‘freedom’ becomes a special privilege”.

implies that their constitutions, policies and practices cannot be built on Christian or other religiously based values, particularly when every European state, like every other state in the so-called Western or industrialised world today, is built upon and has become increasingly reliant on migrants from other cultures, religions, social and ethnic backgrounds. A modern democratic state and, consequently, civil society is grounded firmly on human and constitutional rights and responsibilities - the same rights and responsibilities for all its member-citizens⁶, irrespectively of their religious, cultural and ethnic backgrounds.

In the context of minority groups and immigrants within each EU-member state, it is important to acknowledge different cultural backgrounds and practices *without* essentialising and totalising them. The EU itself is (culturally) diverse, and so are its member states. Above and beyond this diversity is the idea of the *one* civil society - a European civil society - and this means: the same rights and duties for all members, for each nation-state, and for each individual who lives in Europe, no matter where they are from and what cultural and religious affiliations they might have. To raise awareness and acceptance of diversity becomes one of the most important issues throughout the European Union.

Diversity of Families

Families are a key component of civil society and are vital for the democratic foundation and solidity of society. However, we find the importance of families often neglected in public life and in politics. This is in particular true for families that do not fit into the - surely idealised - picture of the 'traditional' family⁷, and even more for families in marginal social positions. A more diverse perspective on social reality in every European state is needed, targeting explicitly - but not solely - families at the social and cultural margins of society.

Lower social position, low income, unemployment, many children, single parenthood, migratory background, illness of one parent, amongst other features, are factors that increase dramatically the likelihood of poverty and/or social exclusion. Un-conventional as well as 'non-traditional' life-styles and family forms are also quite likely to encounter social exclusion, as for instance homosexual parents, teenage mothers, families with adopted children, transnational families, family communes. Until now, these families are often invisible, forgotten or blatantly ignored in public and political discourses. Certainly, there are single actors and institutions of civil society that aim to support for example, families at risk of poverty and social exclusion, single parents, migrant children and others but more political support and constructive policies regarding families of all social strata are needed. Only through an active assessment of the social realities of many families in Europe can we hope to combat social exclusion and poverty more effectively - and ease the way for many children and their families to fully participate, as is their right, in every section of society.

⁶ This raises the fundamental question of citizenship rights and who is considered and allowed to be a *citizen*?

⁷ Cp. Tabone 1994 for the 'traditional' Maltese family.

A Class/Social Position Sensitive Perspective

At the same time, to approach ‘families’ from a dichotomous perspective (e.g. insider/outsider, autochthon/immigrant, settled/newcomer) perpetuates and reinforces exclusive labelling practices, which lead to discriminatory political realities as well as actual and daily performances and practices, without tackling the problems that many families face in EU member states (including Malta), irrespective of whether they are autochthon or immigrant.

Today in Malta, one of the main obstacles for an open and inclusive society is the predominant idea that Maltese society is - on the whole - homogeneous in cultural and ‘ethnic’ terms. This self-image ignores completely the long history of the Maltese Islands with many different people arriving and parting, but also staying and mixing with the local population for hundreds and thousands of years. It denies the influence that Maltese emigrants have on their home place, and, furthermore, it neglects the daily contributions of immigrants currently living in Malta. There is no awareness of diversity of any significance, which makes people who fall outside the norm feel even more isolated and excluded. For those families living in difference (e.g. separated/divorced couples, single parents, teenage mothers, homosexual families, de-facto relationships) in small, allegedly homogeneous societies like Malta means living in almost total seclusion. But I am not the first to argue this. Maureen Cole, for example, described the situation of ‘outsiders’ in general in Malta in the following way:

Maltese society deals differently with its members; inequalities experienced are based on differences in class, in gender, in age, in sexual orientation, in economic opportunities, in prestige, in power. As a result of these inequalities, some members have greater access to what is considered valuable by our society, whereas others have lesser access. This seems like a ‘natural’ state of affairs in our society, a situation which ensures that these inequalities continue, that some members sit comfortably ‘inside’ and others continue to struggle ‘outside’. (Cole 1994: 603)

It should be feasible and useful for a European civil society to approach family issues from a social point of view, taking on a class sensitive perspective. Class provides the crucial, and reflexively critical ingredient that can promote, develop, and reinforce the civil society we are working towards. Class, respectively the social position, continues to exert strong influences on the family and the individual’s possibilities in society.⁸ Therefore, policies supporting (and thus, creating) an inclusive civil society in Europe have to promote *universal access* to education and health, guaranteeing basic human rights to all members irrespective of the individual’s social status, profession (or the professions of parents or partners), gender, religious beliefs, class, ethnic background and so on. For families, and all its members, this must include adequate health cover (including psychological support), education, child care, gender equality, safety at home and in public, and even financial assistance when necessary.

⁸ For an introduction to class and its relevance in the Maltese context see Sultana 1994.

On a policy-level, a class sensitive perspective does not ignore specific problems immigrant families are confronted with. Rather, it emphasises the need to create better access possibilities for many families (autochthonous and immigrant) who are disadvantaged, for whatever reason, including their social status and position.

Different cultural and religious, and even linguistic backgrounds should not be taken as an excuse for failing to encourage better ‘social integration’. As Andrew Geddes (2005) points out: “It is obvious that immigrants cannot integrate into local communities as active members while basic human needs for family stability and personal security are not met”. Therefore, immigrant families - and in particular ‘third-country-nationals’ - need active support to overcome structural disadvantages. The new destination countries in Southern Europe, like Malta, Greece, Italy, Spain and Portugal, need to address these issues in the same way as other countries with longer immigration experiences. Research in the UK, Germany and the Netherlands shows that - in spite of those countries’ long immigration history - many immigrant children, or children descendent of immigrants, the so-called second and third generation, obtain *in general* a lower educational standard than the autochthonous population (e.g. Esser 2004). This proves that equal opportunities are not in reach yet for many people with migratory background, jeopardising also their social integration. However, in countries like Australia, often the opposite is true, proving that it is possible to create conditions to enable children of immigrant families to get even better education than autochthonous children (cf. Antecol *et al.* 2003).⁹

If the family, in all its potential manifestations, in a (culturally) diverse Europe is going to be genuinely supported, it is vital to implement policies that create and “[...] ensure the availability of appropriate legal, social and physical infrastructure, to support caregivers, mothers and fathers, families at large in strengthening their capability to provide care, nurturing and protection in the best interest of the child” (Schölvinck 2004). Such policies will actively combat and prevent all kinds of social exclusion and impoverishment. This means that emerging policies affecting families too must act in concordance with other policies to promote a tolerant and open society based on “social coherence and ‘quality’” (cf. Dumon 2003) as well as social assurance, equality, dignity and respect for difference.

Conclusion: Openness for Diversity

The EU is a diverse endeavour. Indeed, its diversity - on the basis of shared principles and aims - is its strength. At the same time, one of the main ideas in the concept of civil society is to understand ‘society’ as a dynamic process. Both concepts, diversity and process orientation, are fundamental in the context of this Project: The Family and the Civil Society. Diversity and process are concepts in straight opposition to static and monolithic, and they apply to all layers and ingredients of society and all its members. Consequently, ‘culture’ and ‘religious belief’ cannot be seen as essential and unchangeable but as hybrids and dynamic changing processes. Thus, flexibility and acceptance become of central importance in the political and daily life of a democratic, inclusive society.

⁹ Interestingly, second and third generation Maltese immigrants have *lower* achievements in education than other second and third generation immigrants in Australia.

Family and parenting are of central political concern, and we can never underestimate the impact of social policy affecting families on the formation and perpetuation of democracy and civil society. It becomes crucial on a policy level - which will also encourage social activism in civil society - to raise the awareness for, and practical everyday acceptance of, *diversity* and *difference* among all members/citizens, and to mobilise them towards the vision of building a peaceful European society with equal opportunities for all its members.

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NURTURING SOCIAL EASE THROUGH KNOWLEDGE

KAY GRETCHEN

“Wars are usually a consequence of the breakdown of communication between the protagonists” - (Akbar Ahmed 2002, p.22)

Humankind appears to be addicted to violent conflict. Confused by ignorance, societies are duped into regarding the “Other” as the enemy. “Manning the battle stations,” even figuratively, closes our minds and hearts to a complex reality and compassion for the Other’s, and our own, suffering. The current tension between the Muslim world and the West is a case in point. The label “clash of civilisations,” to describe differences between Muslim cultures and the West, not only reduces global social problems to a simple formula, but it also casts these differences in an oppositional religious light. Even if the cause of global upheaval were indeed restricted to antagonism between religions, particularly Christianity and Islam, accepting the inevitability of violent conflict to meet religious ends can only have dire consequences. The antidote to enmity among segments of pluralistic societies is knowledge: understanding of other cultures, beliefs and circumstances. To accommodate the growth of this knowledge among the citizens of the EU and allow conflicts to subside, a pause in the drive towards social integration, but not in the drive to enable citizens and residents to achieve self-determined goals, would be the best guide for family policies. This unusual strategy of not defining values for all living within the boundaries of the EU would be difficult, but could in time aid the emergence of social ease. Evidence from the United States’ experience demonstrates that a neutral public stance does not reduce, but indeed supports, diverse religious expression. Meanwhile, civil society organizations can help to cultivate the trust needed for civic peace by collaborating in addressing problems common to all: drug addiction, unemployment, and problems of the aged, to name a few. The institutions of the EU and its member countries do have an active role to play in the “dialogue of civilizations” (Ahmed, 2002, pp.1, 24), However, the media’s participation in the project of communication is vital, too, if the ordinary citizens of the world are not to be victims of an ancient addiction. Evidence points to a capacity for openness at the cellular level of civilisations: let us nurture this into healthy social relations.

Violent conflict must be addictive. What else can explain why human societies repeatedly choose this means, with its destructive consequences, to solve their problems? Like the drug addict who poisons himself for short-term pleasure/escape, victorious societies must constantly invest in maintaining capacity for control through destruction, or risk being

overtaken in turn. It is almost as if the protagonists choose to avoid or terminate communication. Although the European Union has helped to reduce the scale of violence, so that its Member States now resolve differences peacefully, disputes arising from political, ethnic, religious and/or economic differences still erupt into violence within its borders. Although the level of violence has abated in Northern Ireland, and the ETA declares it is now giving up its armed conflict, these two examples, plus the July bomb attack in London, indicate that the threat of violence has an internal, as well as external, basis.

Both leaders and citizens, or followers, contribute to enmity. For example, the Japanese were demonised in the United States during the Second World War through film, cartoons in newspapers, and other media as a part of an official propaganda campaign. Even though Americans of other ethnic backgrounds living in California, Alaska, Oregon, Washington and Arizona knew their neighbours of Japanese descent were normal human beings, few protested when their Japanese neighbours, including American citizens, were “incarcerated” in camps for up to four years. The American concentration camps were certainly not death camps, but their mere existence gives rise to questions of the durability of civil liberties. (Daniels 2002).

Ignorance providing fertile ground for enmity is particularly pertinent in the current state of heightened tension between the secular/Christian west, and Muslims. Segments of societies in both the West and in the Muslim world believe that the war in Iraq, support of Israel against Palestine, the terrorist attacks in New York, Madrid and London are evidence that the two are enemies. Secular societies in Europe are becoming increasingly antagonistic towards their Muslim immigrant populations, blaming their loyalty to Islam for their apparent frequent recourse to violence. Many indigenous Europeans feel immigrants should conform to the norms and values of their country of residence (van der Veer 2001, p. 11; Goldenberg 2006). The recent violent protests by Muslims in the wake of the Danish cartoons confirmed the western view of Muslims as violent and fanatical (Armstrong 2006; Goldenberg). To Muslims, especially those with no experience of the value of freedom of expression, the ‘Danish’ cartoons were one more example of the west’s arrogance, and insensitivity to Muslim values (Armstrong). This lack of understanding, if not addressed actively, may indeed lead to an escalation of violence.

The concept of the “clash of civilisations” is ill-founded and reductionist. Many of the attacks on Westerners by Muslims have more to do with struggles within Islam, exacerbated by globalization, than with enmity between Islam and Christianity, or the secular philosophy of the west (Ahmed, Doran 2002). Muslim societies are suffering the consequences of poor leadership and the breakdown of social cohesion, the latter a result of complex developments including “massive urbanisation... a population explosion, large-scale migrations to the West, the gap between rich and poor which is growing ominously wide, [and] the widespread corruption and mismanagement of rulers...” (Ahmed, p.31). In the context of such breakdown, it is not surprising that extremists’ blaming both the West and corrupt rulers for social ills appeals to, and gains sympathy from, “a broad range of disaffected citizens experiencing poverty, oppression and powerlessness across the Muslim world” (Doran, p. 38). Considering that “a large percentage of the population in the Muslim world is young, dangerously illiterate, mostly jobless and therefore easily mobilised for

radical change” (Ahmed p.31), echoing the refrain of struggle is likely to fuel tension, rather than defuse it.

It is important to differentiate, moreover, between Islam the religion and cultures that espouse Islam. Interpretations of what constitute modest apparel and behaviour for women, for example, vary over time and place. Both expatriate and national Muslim communities have changed appearance dramatically in the past 20 years, with more choosing traditional garb. Although my experience is not a scientific measurement, I was startled by the increase in three years of immigrant women in London fully veiled. Four years ago, there seemed to be a large number of immigrant women from Muslim countries in the same district of London, in western dress, not even wearing a headscarf. Last year, this trend had reversed. Also, many women living in cities in Libya, Egypt, and Morocco still prefer Western dress. My casual observation is substantiated by Louay Safi, who notes that a number of Muslim immigrants to the US confuse parochial, cultural traditions with religious values, which becomes obvious when the second generation, who, although devout, identify with American culture. (Safi n.d., p.3). Ahmed states that the Taliban’s treatment of women and minorities has as much to do with their tribal culture as Islam (p. 38). Political culture in Muslim countries emphasizes obligation to society, rather than individual rights and civil liberties (Price 2002, pp. 213, 222). However, growing numbers of Muslim immigrants in the West are beginning to speak up for their civil liberties. (cf., e.g.Safi, p.3) Thus many of the thorny issues that divide Europeans of different ethnic and religious backgrounds are based on political and cultural differences that have been draped in religious garb.

Also, it is a mistake to equate European and Christian, or to even restrict the major other view of the sacred to Judaism. Many secular, liberal values, such as freedom of expression are just as sacred in Europe as the values of Christianity (Armstrong). Furthermore, Europe, as is North America, a very diverse continent, both ethnically, and religiously. Even before the increasing speed of globalization in the 1980s and 1990s brought the flood of immigrants to the West, and with them a myriad of customs, cuisines, languages, and religions, Buddhism, Islam, Sufism, and Hinduism, to name a few of the other traditions, have been established in Europe for at least a century. These religions have grown from their traditional base of followers, gaining European adherents from as early as the late 19th century. In addition, the last twenty years have seen a growth in what are called New Religious Movements, or NRM, in Europe. This term embraces a wide span of groups, from New Age pagan sects through Scientology, to Jehovah’s Witnesses. A number of these groups have generated much debate and alarm, and consequently meet with a close scrutiny and at times, restrictions on their practice from the authorities (Synek 2002, pp. 41-42). Neither is European Christianity, or the values espoused, monolithic. Values and tolerance for variation on issues such as abortion, divorce, celibacy of the clergy, homosexual unions, and euthanasia, for instance, diverge sharply not only between the Catholic and Protestant faiths, but within the categories of Protestant, and at times, Catholicism (the main example is celibacy). Misperceptions on all sides arising from this confusion about identity and the sacred undermine efforts to resolve conflicts.

Globalization has produced societies with new patterns of living:

As the entanglements of everybody with everybody else have grown in recent times to the point where everyone is tripping over everyone's feet and everyone is in everyone's face, its disruptive power, its capacity to induce doubts in those who think they have things figured out, taped, under control, rapidly increases. We live in a bazaar, not a cathedral; a whirl, not a diagram, and this makes it difficult for anyone anymore to be wholly at ease with his or her own ideas, no matter how official, no matter how cherished, no matter how plated with certainty (Geertz, cited in van der Veer, p. 13)

This uncertainty increases the probability of social dis-ease erupting into violence. Anyone who is different can be the target of an attack. Rival gangs of supporters, divided on racial lines, of the Paris Saint-Germain football club, is only one example of how disruptive these confusing times can be. Gangs of Caucasian supporters regularly attack gangs that are multiracial (including whites), and vice-versa, in contrast to the usual scenario of football hooligans that attack supporters of other teams. (Pugmire, 2006) Although this new order is disorienting to all societies (one used to be able to decide with which group to live and associate), it seems to strongly affect those societies most attached to tradition and certainty, such as France (Hadas-Lebel, 2006).

The antidote to enmity or discrimination is knowledge, not forced tolerance or integration. "With understanding comes sympathy and compassion towards those who do not belong to our group, or community or religion." (Ahmed, p.44) In view of likely resistance to positive knowledge by some segments of society, building social peace on a foundation of understanding is a long-term project. Nevertheless, cornerstones in various communities throughout the EU have already been laid. One research group in the UK, as a part of the "Faiths and Social Cohesion" project, supported by the EU Directorate General for Employment and Social Policy, discovered structural problems faced by Muslims in practicing their faith. Owing to the demands of prayer, Muslims prefer to convert residences near their homes into small mosques. However, the local planning board, not aware of this background, was reluctant to grant permits for such renovations, although it was happy to grant permission for turning large buildings, such as cinemas, into mosques, thus indirectly creating barriers for the Moslem community (Manco 2005, p.186).

Although social peace is highly valued in the European Union (Synek, p.43), as well as the associated values of social inclusion, integration and tolerance, as can be seen from the titles of many programs, projects and directives, such values can rarely be successfully imposed. In the milieu of a pluralistic society, with contrasting norms and values, mandated integration may be strongly resisted. Therefore the best guide for family policies at the EU and national levels may be to suspend defining European values for families, and take a more neutral stance towards private values, as these are often coterminous with individuals' view of the sacred. Time and space can thus accommodate the project of developing mutual understanding. One intervention that may be embarked upon is development and promotion of comparative religious studies curricula (for information and understanding, not for character formation or catechetical purposes) for all ages. Even this would have to be developed with care and consultation, so as not to alarm parents. The foregoing is not meant

to imply abandonment of protection of individuals and groups from the intolerant behaviour of others. Fundamental human rights and civil liberties are core values in the EU and should be safeguarded. Furthermore, the various directives and programs directed toward the elimination of discrimination is laudatory and should be fully utilised.

Experience from the United States may be helpful during this stage of developing cultural harmony from the inside out. Since 1947, in the case of *Everson v. Board of Education*, the Supreme Court has interpreted the Establishment Clause of the First Amendment in the Constitution as calling for strict separation between Church and State. This means that the State will not only be non-sectarian, but also will not favour religion over non-religion. This neutrality has been applied primarily in questions of public prayer, notably not allowing it in state schools, and displays of religious symbols in public property. For instance, a display of the Ten Commandments on government property was not allowed in Kentucky last year, but it was in Texas. The rules are not crystal clear, but the grounds for determination do not seem to be related to the political or religious nature of the state. One important exception is allowing tax exemptions for religious institutions (Uhlmann, 2005, p. 37-39).

Paradoxically, this neutrality does not reflect hostility towards, nor result in a decrease of, religious activity, as maintained by religious conservatives (e.g., Uhlmann, Munoz, Safi). Indeed, quite the opposite has happened. Almost 60% of the “people in the U.S. say religion plays a very important role in their lives” (Pew Research Center for the People and the Press, 2002). The span of diversity is also large, encompassing many non Judeo-Christian traditions as well as the established faiths. Neutrality may not constitute true tolerance, or provide a basis for communal relationship (Creppell, Zagorin, cited in Weinert 2004, pp. 101-102; McCarl 2004, p.127), but it does allow a sense of “time out” from the disorientation of globalization noted above. Perhaps the greater expanse of open physical space in the United States strengthens this emotional space, which may limit applicability of the model in the densely populated countries of Europe. Europeans may also find any hint of atomisation repugnant, but a slight tilt towards non-interference with private values could provide welcome relief from the feelings described by Geertz.

During this relaxation of the drive towards social integration, civil society organisations can help to build the foundation of trust necessary for full, engaged tolerance. Not only can they connect various groups of society through enlarging and disseminating knowledge, which includes political and cultural values, but also by identifying and cooperating in the alleviation of the common problems faced by all (Ahmed, p.44; Boyce, Koros and Hodgson 2002). This of course must be a mutual project. Minorities and newcomers have a responsibility to learn about the values of the dominant/indigenous political and cultural values to avoid fuelling tension. If this strategy of multicultural collaboration is to be successful, the identity of minority groups must be respected and valued. Strategies from the community based rehabilitation (CBR) approaches to peace-building provide valuable guidance for building trust within a society, notwithstanding the approach’s traditional application within the context of armed conflict. Peace-building “requires a process of non-violent social change toward equality” (Fischer 1993, p.250 cited in Boyce, Koros and Hodgson). The Multi-track diplomacy strategy of peace-building, which includes participants beyond the usual national governments and multi-lateral agencies, seeks *inter alia*, “to decrease tension, anger, fear, or misunderstanding by humanizing the ‘face of the

enemy' and giving people direct personal experience of one another" (*ibid*). By focussing on a concrete, unifying issue and involving local organisations with foreign civil society organisations in a concrete program of rehabilitation of sufferers of disabilities, CBR subtly offers "the additional benefits of establishing open and trusting dialogue that can aid in resolving conflicts and discourage future violence." (*ibid*)

Civil Society efforts in building trust within communities must be sustained through the actions and communication efforts of officials at all levels of government, both internally and externally. They can do this by supporting civil society efforts; acting on insights generated by civil society research projects (adapting planning guidelines to the needs of minority religions as noted above, for example); demonstrating that the fundamental human rights and civil liberties of all living within the society's boundaries are respected, by applying the rule of law; by putting "pressure on Muslim governments... to ensure justice and clean administration"; and by clearly communicating to ordinary Muslim people that they do not consider Islam to be an enemy, however much they may disagree with some of the actions of Muslim individuals. (Ahmed, p. 45)

Media institutions can strengthen or unravel these efforts of other sectors of society. Immediately after 2001 in the US, news reports of President Bush's positive remarks about Islam, visiting a mosque and other Muslim institutions, and of many instances of inter-faith dialogue and condemnation of attacks on those perceived to be Arab all helped to counter negative opinions of Muslims. However, in the intervening four years, the portrayal of Muslims has once again become overwhelmingly negative. Unsurprisingly, 32% of Americans, from 14% in January of 2002, "believe mainstream Islam promotes violence against non-believers" (Goldenberg). This unfavourable opinion is further entrenched through the largely negative portrayal of Western film-makers. (Ahmed). However, the Danish cartoon crisis has exemplified the difficulty in finding a balance between respecting the liberal right to freedom of expression and the desirability of prudence in the face of heightened global tension. "Our right to free thought and free speech has been hard won, and western civilisation could not function without it." (Armstrong) Essentially, individuals must retain their right to be difficult. Thus, while Christian churches in Europe have only grudgingly accepted this right as late as the twentieth century (Synek, p. 48), and may appreciate more restraint in use of this freedom towards their own views as well as towards other religions, imposing restraint through any means should be approached with extreme caution.

There is a thin line between exercising freedom of speech and emphasizing the extreme episodes of conflicts to maintain audience interest. This tendency of broadcast journalism to report the news episodically, has been shown to result in the majority of public opinion assigning blame for a problem to a particular person or group, accompanied by expectations for a punitive solution to a law and order type of problem. Conversely, a thematic approach, or presenting the issue in a broad societal context, results in assigning causes to a spectrum of factors, including economic and social circumstances, with a more social solution. (Iyengar & Simon 1997 pp. 254-255) Emphasizing episodes of violence, and stories of conflict, can therefore contribute to polarisation, and closing of communication between protagonists, starting another cycle of violence. Armstrong's feature in *The Guardian* that calls for defusing the tension between Islam and "the west", puts the issues in context,

contributing to openness between the holders of “competing conceptions of the sacred” (Armstrong). To counter the perception of the sharpness of the divide among ordinary citizens, she cites evidence of understanding from a meeting of the UN-sponsored Alliance of Civilisations: a poll of Muslim youth “showed that 97% of the young people surveyed deplored the violence and rhetoric of the Muslim protesters, even though they had been offended by the cartoons. Another delegate reported that while most Danish people vigorously defended free speech, they were distressed that the cartoons had so heedlessly trampled on Muslim sensibilities.” (Armstrong). All such evidence should be widely disseminated to nurture openness to knowledge about the “Other”. Encouraging all such signs of empathy for local and global neighbours is a sound program for developing healthy social relations.

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A CASE FOR EDUCATING THE CITIZEN FOR EFFECTIVE PARTICIPATION IN CIVIL SOCIETY

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MARSELLE DELICATA

Introduction

In this paper we have sought to identify some main issues relating to the practice of civil society within advanced society. The need to go global by shaking off the enslavement of the human person as an economic factor is estimated to be a central issue. To return to the old anthropological base of spirituality as a universal raises awareness to the sensitive awakening to values. In this process, cultures can find their own identity through spirituality to be able to transmit cultural values to future generations. The perspective of political morality comes into play not only because political action is only moral when practiced but also because civil society can motivate political morality.

The paper indicates the importance of universal values not only as a quality but also from the point of view of concrete practice attached to political morality.

What happens in Malta must be seen against the backdrop of what happens in the rest of the world particularly the whole of Europe. This paper attempts to draw on issues of current debate; issues that are relevant to major changes taking place here. Those selected for treatment here are not all the components that require profound understanding. Importance is given to these because they are indicators of the need to review education for its content of spiritual universals, traditional beliefs and national identity, the family and the transmission of cultural values. Asking why these fail, and whether there is a need for a formal base for this transmission and the multicultural process in particular, considering the world we live in, is an urgent task to light up the darkness typical of modern societies.

Claes G. Ryn discusses the importance of value-centred universals as inseparable from history if they are to be concretized in the individual. It is then that an internalized view of values can motivate towards goodness, truth and beauty to discount the ugliness of everyday life.

The same author discusses further the transcendence of these universal values in political action that cannot be moral unless concretized in action. He reviews political morality through the politics of transcendence¹.

This is followed by a review of civil society as a core concept of democracy. It entails the concepts of human assets of the individual citizen, or social capital, human wisdom and human capital. These are found to be essential components for civil society to nurture, a tool through which civil society itself can function by bringing the politician to the citizen (Mcgregor). For Mcgregor education as an important pillar of society. The positioning of spirituality in education is offering new insights to educationists around the world particularly in the area of the family as the basic cell of society through which values are transmitted.

The question of national identity is basic for the multicultural process - an essential requirement for world peace. This process can only be carried out if the basic core of religious beliefs is rediscovered to find the universal values that are common to all because they have been residing in every individual of whatever belief for thousands of years. Finally, a departure from the current trend of seeing the human being only as an economic factor will lead humanity to look inside and rediscover all that is valuable in human nature for the sake of future generations.

The changing role of women is an issue that can only be reviewed as an area of study. The transformation of society through role change has been of particular significance to family, children, the elderly and youth. We need to understand what is happening. Various agencies come into play here in the context of religious belief and cultural values transmission through the family. A particular reference is made to Christianity as Malta's cultural landscape is based on Catholicism. Hence, it is important that the recent document by Pope John Paul II, the *Familiaris Consortio*, be reviewed.

The final point made is by Benet Davetian of Prince Edward University, an authority on Civil Society. He speaks of pain-riddled societies wherein human communication is problematic. Group processes depend on individual processes. The psychological concept of pain interferes with paths of communication rendering their deciphering stagnant and problematic because of lack of authentic motivation of tasks. Thus, the human evolution of societies is impaired. This has some practical applications to Malta because of some unresolved political polarization.

Value-Centred Historicism

Claes Ryan has written that:

“In a time of cultural dislocations and disruptions when society is torn by competing preferences and traditions, abstractionist reasoning and a-historical, “idealistic” imagination are particularly inadequate. ... Since genuine

¹ A Common Human Ground - Universality and particularity in a Multicultural World. University of Missouri Press, 2003 chaps 7-10.

universality lives in concrete particulars, historical ferment and upheaval create a particularly strong need for discriminating and creative reconstruction of continuities.”²

If resources of the past are brought to bear on the actual problems and opportunities of today a great depth in synthetic abilities is essential not to fall over the cheap and artificial universality of abstractionism and idealistic imagination, Claes Ryan continues. The separation between history and universality is artificial. Value-centred historicism calls for greater sensitivity to the here and now historical reality of goodness, truth and beauty. In this context, universal values and the reality of everyday living cannot be separated from each other. The individual, who experiences universal values in the context of his own life, does so in a particular context that is unique. Once these values come alive, their realization gives a special satisfaction that is not forced, but thrives from within. Hence, these values become his own normative pattern of living. Universal values are synonymous with goodness, truth and beauty. Only by promoting a culture where universal values initiate human action can the presence of evil, untruth and ugliness be discounted.

A discussion about universal values prompts debates on moral principles, rights and pluralism, creating several paradoxes because of modern day thinking or reasoning. There are diverse cultures and beliefs and the person’s individual freedom is always a central issue. From the perspective of Western thought, Claes G. Ryn suggests a rethinking for a revival of an earlier mode of thought whether one calls it classical or Christian to a value-centred historicism approach. This does not only include the possible tension of universality but the synthesis of universality and particularity. Man’s historical experience or the circumstances of his everyday life can manifest the universal. Alternatively, in Christian thought, a rethinking of natural law that is common to all mankind, and manifested in the universal.

Transcendence and Political Morality

A debate may arise here about transcendence in Politics if universal values are to become active in political reasoning .Would the transcendence of universality in political action be a pretentious passivity of platonic idealism? Plato’s reaction to politics was his difficulty to retain his integrity in public life. Consequently, he withdrew from the prevailing “wickedness”. Politics creates the need to bend and improvise. Humanity needs the ability to handle hurdles, limits and complications. Morality needs to attune to such a state, which in practice may be an escape from actual responsibilities. This is how a person who retreats from responsibilities retains his self-respect. If not actualized, transcendent morality induces melancholy and passivity that leaves both public and private personal life morally in the lurch. Claes Ryan’s discourse centres on the importance of the emergence of universal values from within the inner life of the individual as an outcome that can only be moral when transmitted through concrete action.

Placed within the context of value-centered historicism, positioning value-centered political action as transcending into concrete actualization is not the same as Plato’s scorn and

² Claes Ryan, *Humanitas* Vol.VI No.1 Fall 1992/ Winter 1993.

animosity arising from his idealism of political morality. For political action to be moral, it needs to be connected to the world of practice and the concrete.

“Allegedly elevated political norms and ideals that produce reluctance and inability to act morally in real situations are allies of open immorality.” (Ryan -“Humanitas”)

Transcendence of values has a close connection with the reality of history. Standing aside is not a political virtue. To raise the quality of politics, excuses for moral passivity must be cleared. Not to leave the “transcendent” empty one needs to practice and concretize morality into the historical perspective. Policymaking addresses realities and needs to be followed by action. Politics is the actualization of the process of the transcendence of values. It is through an increased awareness that even the worst situation can improve, that genuine political action is taken. Likewise, the individual who discovers the reality of the universality of values justified by their unified significance in the realization of man’s higher potential experiences also a normative authority within himself that is not externally imposed. Abstracting principles can be expressive but they do not have the same pull to the construction of goodness, truth and beauty as when values are put into the concreteness of historical reality as an authentic normative authority.

The transcendence of universal values into human action is a significant perspective to the humanization of society and social cohesion. Communities are shaped by individual action and motivation. In this context, the individual is not only a central factor for freedom in democracy but also a contributor in an altruistic mode of behaviour in an ecosystem of which the family is a basic cell. Consequently, solidarity emerges as an essential component.

Civil Society and Human Assets in a Democracy

Drawing on studies by McGregor, to keep politicians in touch with reality involves, in a more effective sense, changing public opinion. Lobbying to change party policies and legislation takes place through political action. Campaigning against an intransigent politician may prove to be fruitless. It is more worthwhile to concentrate efforts on more achievable goals. Collective action and bargaining power is more influential than individual voters’ opinion. This strategy takes us to recent human experience into the distinct realm of Civil Society.

“It is the social glue that holds countries together and includes the strength of party policy of families, community voluntarism, interest groups, philanthropic associations, friendships, selflessness, public and civic spirit-the moral elements of society.” (McGregor.) Civil society is the result of the actions of citizens to improve their communities and societies. It is a core concept of democracy. Where citizens have deep-rooted values that animate civil society these are reflected in communities that can thrive and flourish. The contrary can very well be a decadent society because the excess of individualism and the great diversity in pluralism will make social cohesion more difficult.

Marked by role diversity civil society keeps a balance by preferring none so that each citizen fulfils his role. Varga (1998) notes that civil values include loyalty to fellow citizens,

respect for the law, fairness, philanthropy, tolerance and voluntarism. Emphasis on zero tolerance encourages lack of forgiveness.

“Self-interest is replacing collective responsibility, mistrust is unseating confidence in public institutions, [authority] and optimism about our collective future is declining.” (Civil Society and Democracy-Mcgregor)

When institutions dysfunction a decline in human and social capital results. The economic systems of today have rendered the human person simply an economic factor. A person is “also a familial and social being with an inalterable value, inalienable rights, and potential capabilities, independent of his physical, psychological, material, social and cultural circumstances.”

Each person is unique with a huge store of experience in social and human assets. The human person contains a store of wisdom he acquires through the context of his own experience whether personal or archaic. Mcgregor notes Putnam’s suggestion that the decline of civil society and social connectedness fails when human, social and wisdom capital and human assets are in decline too. Putnam points to the indicators of this failure as a decline in income security and standard of living , women moving into the work force (as demographics), the disinclination of young people to engage in civic activity, suburbanization, architectural change in contrast to maintaining relating and connecting, urban renewal which destroys a functioning community, changes in the economy and technology. On another level, busyness and time pressures, disruption of marriages, family ties and community ties, and the growth of the welfare state and subsequent dependencies and isolation from mainstream society also contribute to this decline. Wolfe draws a distinction between a civil society and The civil society which is the embodiment of those working as a counterweight for a less civil society. This provides a collective voice for those who are at the margins of society and have no access to political power.

The Vanier Institute of the Family has elaborated the fundamental functions performed by the family. As a social and democratic institution the family functions to create human and wisdom capital by the addition of new members, physical maintenance and care to meet basic needs, socialization of children into adult roles, consumption, production, and conservation of goods and services, nurturance, support and love, social control of members. There are many types of families but they all have these main functions as a universal.

“The civil society is the social space between families, the private sector and the state where entities address the power relations within the society and work with marginalized citizens to empower them and help them gain access to material, political, social and cultural resources.”

“Civil society creates social capital, ethnic, racial, gender relations and human rights. Members of civil society include entities autonomous from the state and private sectors, NGO’s, professional associations, grass roots organizations, labour unions, cooperatives, media, religious assemblages. The state must create the necessary policy environment whilst the private sector creates the financial and physical capital.”

Considering this as a framework for the debates of universals and transcendence coupled with political morality out of which the societal actions of civil society find expression, one cannot forget the role that educational quality plays within these parameters.

In this context the abstraction of goodness, truth and beauty does not only transcend, reach out and beyond but it actually has impact on the practice and concreteness of everyday life where connectedness and the genuine practice of transcendence and political morality play a great role.

The individual in the family is a priceless asset. Education today emphasizes the importance of educating families. The positioning of spirituality in education has become a recurrent theme that is being heeded by many countries today. The multicultural process in a globalized world cannot take place if not grounded in a universal spiritual base that needs to be recovered before everything else fails.

These reflections were inspired in various educational treatises that seek to correct today's social ills. The idea of One Europe, is in itself an experiment in multiculturalism based in the kind of universal spirituality mentioned. A Europe seeking to move closer to the citizen, and an advocate of the democratic process aiming to bring reality to policy makers through the wisdom capital of the citizen. The ultimate question would be a critical examination of whether value-centred universals are reaching and enhancing the capabilities and fulfilment of citizens through the morality of political action.

The Positioning of Spirituality in Education

McGregor

This is illustrated in McGregor's paper on the positioning of spirituality in education where new insights facilitate a deeper understanding of the phenomena of spirituality as a universal for professionals to adjust practice, policy initiatives, research, agendas and curricula accordingly.

The world has changed. Our systems are subject to the economy, technology and the political. These cannot handle current challenges, threatening the deeper spiritual crisis of the future. The family needs inner peace and spiritual wellness to function properly. It is an important notable fact that the thinking arising from the Lake Placid conferences in the early 1900 has had a place for spiritual wellness in the teaching of home economics in education in preparation for daily practice. Not all countries followed this perspective. In Malta, two contrasting views have lived together for more than three decades by following the British system, at the same time a parallel value system built on the emphasis one puts on the family and the importance given to the propagation of the Catholic faith and spiritual wellness. The confusion arises because the spiritual has different meanings to different people and although it is a universal value the values transmitted in the education system (as a latched on system to other cultural systems) and the assets of the human wisdom passed on traditionally by the family as an institution through the Church do not always coincide. This is a case where party policies do not always transcend into the practice of political morality for lack of concreteness. It is worthwhile to examine critically the significance of

our spirituality in practice and its position within the education system. Emberly defines spirituality as a turning inward towards wisdom hidden in one's inner being. "It encompasses widely varying degrees of, or lack of, (a) joy and a sense of completeness associated with the holistic connectedness of the world (b) an appreciation of nature as a dynamic ecosystem, (c) the pure joy of living and (d) peace, faith and an inner strength gained from insights and moments of growth and enlightenment. Spiritual well-being captures a layer of well-being, a sense of insight and ethereal, intangible evolution, hope, faith, and inner strength not readily imparted by either social or psychological well-being as they are conventionally defined. (Mcgregor and Goldsmith). Mitsifer states that spirituality does not refer to any specific religion or faith but to depth, value relatedness, heart and personal substance. Two schools of thought prevailed in the teaching of home economics in education i.e. education for the scientific management of work of the home for efficiency and economy, versus education to enhance the development of individual capacities through the family. The signs of the times prevailed in choosing the former (Brown-Pendergrast). Eventually the scientific and technical value preceded the politico-moral aim and spiritual aim of home economics. Mcgregor says that Redfield who is not a home economist visualizes a spiritual awakening of the world's families rather than the economic manipulation of the world's economy. "The intuitive spiritual world is all too often derailed into a marginal position in our culture." (Redfield & Adrienne). Redfield and Taylor argue that humanity lost itself in creating an economic security to replace the spiritual security it had lost with the advent of a scientific paradigm. Families fill the gap by resorting to over-consumption, materialism, addictions, withdrawal and violence. In the rush of daily life, it is easy to put aside one's spiritual self and soul. Money, education and success have not improved the social psyche. There is now a search for the spiritual because it is universally innate and materialism has not been able to replace the psychological comfort coming out of spirituality. There is a shift towards a new culture of spirituality.

This quest is present in all cultures existing in the different forms of expressions of spirituality from religion to alternative medicine. Mcgregor suggests that there are some recommendations one can follow to improve this situation; develop new concepts for research and practice, engage in critical reflective practice, reframe the home economics education in the socialization process, engage new intelligence literature to inform practice, learn and teach change management, engage in transformational practice and leadership, bring spirituality into research and analysis of social ills and into the school curricula. The Australian home economics conference in Tasmania indicates that aspects of spirituality are a recurring theme on the agenda and the time is ripe for this new dimension of practice (Mcgregor.)

Undoubtedly, cultures vary in beliefs, traditions and customs and the ideal of a universal socialization process will not be achieved. It is a question of unity in diversity where the process of diverse cultures can be transformed into peaceful co-existence and social cohesion. Basically, the multicultural process begins by the understanding of one's own culture including the spirituality perspective and entrenched in one's own cultural identity. Self-understanding, including culture is a lifelong quest that opens up ways of understanding other cultures. Accepting diversity facilitates a deeper understanding between cultures. The road for peace is through the individual in a family whose members are educated to place themselves within the ecosystem of God's creation of the universe.

Education

Education is changing rapidly, necessitating a continual need for policy reforms. New standards, state reforms, and accountability requirements have raised expectations for students, and placed greater demands on administrators and teachers. States have been given more authority as to how education should be organized and delivered. Over the internet education is possible at any time, anywhere. Unfortunately when education reforms are considered more attention is given on how the reform will affect the delivery, structure, funding and control of education. Less attention is given to the fundamental principles of education. The Center for Education, an independent advocacy group focuses on the purposes of education or the fundamental principles that contain the essential values and aspirations for all public schools.

A discussion of fundamental principles is very much in the limelight because of the rapid changes necessitating frequent reforms. The Centre for Educational Planning (U.S.) proposes key questions one can ask about education reforms, such as whether they are:

1. effective in preparing for life, work and active citizenship,
2. whether they promote social cohesion and shared culture.
3. whether education is accessible to all and is free of charge.
4. do they ensure accountability to the taxpayer and public authorities and are they responsive to the needs of local communities?
5. Do they respect the right to religious freedom?

This does not represent the totality of all purposes for education, as different cultures will have different needs and different responses to the wider world around them. What can be considered as an essential component is the need to address real public responses to education both on a local level and on a multicultural level as we all have to meet the realities of the world we live in. For example, the emergence of the Gaia movement because of changes in the environment and subsequent educational responses, focused on human ecology, educating families as the source of the transmission of values and preparing adults for active citizenship to preserve the environment. The question of religious neutrality would be better viewed from the perspective that upholds the respect and dignity of all persons of whatever ethnic race, colour or religion.

Unesco worked hard on the problem of International Immigration by promoting the education of immigrants and the acculturation of immigrant families in their new culture. Thus rather than creating tensions caused by different cultures, all citizens are educated to look upon each other with respect and dignity in the acceptance of their reciprocal diversities.

Value-centred universality is based in the context of the historic present and attained through practice and concreteness. Its transcendence through political morality and action is illustrated in the actions of civil society as a genuine effort to balance fundamental human rights and soften the impact of the ugliness of life. This ideal would not function if disconnected from the global significance of diverse cultures in their spiritual quest. Democracy engages the plurality base of cultural diversity, citizenship and affirmative

action. In 'Democracy, Education and Multiculturalism: Dilemmas of Citizenship in a Global World', Torres Carlos Alberto says that cultural diversity is a major by-product of the growing process of economic, cultural and political globalization which has no parallel in the history of humankind. He concludes that without a serious exploration of the intersection between cultural diversity, affirmative action and citizenship the democratic discourse per se is at risk. "Without a technically competent, ethically sound, spiritually engaging and politically feasible theory and practice of multicultural citizenship the people will perish". He recommends Paolo Friere's ideology to build a world which is less cruel and less ugly. He speaks of cultural decay as the social breakdown of the nurturing system for children. It is an unprecedented cultural decay or the inability to transmit meaning, value, purpose, dignity and decency to children. It is what education, the family and other societal institutions are supposed to do. Education should be about understanding the indissoluble linkage between theory and practice. Multiculturalism is about the product of the democratic process of living together but it is also the search for cultural identity and citizenship. It is the search for oneself within the hidden depths of the wellness of spirituality and its cultural expression. Above all, it is rooted in the transcendence of universal values as a concretized form within the normative process. Education is the essential and irreplaceable tool through which this process can take place, whether it is state education, family child rearing or socialization through culture.

The history of humankind evolved into an economic-centred paradigm that has entrapped humanity into a path fraught with materialism, disconnectedness and a hedonistic rat race depriving them of the comfort of spiritual wellness. When societies are unaware of the sources of social ills - addictions, withdrawal and violence, the concept of value-centred universals failed to transcend into political morality followed by action. If party policies rest on lip service, because of difficulties and apparently insurmountable structures, if intentional political morality is not concretized in practice its purpose is defeated. Standing aside is akin to political immorality. The global economy of today has further deepened the fissures that separate universal values from the historical perspective of the here and now. The failure of the transcendence of values into political action resulted in the decline of social capital and the need to transfer social and human capital to policy makers.

This state of affairs led to a new poverty where the spiritual dimension of humanity was cast aside baring the gaps by the loss of social and wisdom capital or the totality of human assets arising from the unique human experience of the individual. The need for bargaining power through civil society emerged, even to act as counterweight to a 'less civil' society on behalf of those who have no voice.

Civil society can bring cultures and communities together. However the practice of democracy alone will not succeed in producing the social glue which is necessary to hold them together unless value-centred universals are deep rooted emanating from within, sustained by a spiritual perspective which highlights and upholds the uniqueness and social, human and wisdom capital of the individual from whichever culture he comes .

The by-product of several cultures together enriches humanity but this will not be achieved if the individual does not turn inward to look deep into his own self and examine his own identity. An identity with a store of hidden wisdom both personal and archaic anchored

within the experience of spirituality lying there in each individual for thousands of years. The failure to transmit these values culturally through families and education may result in an unprecedented decadence.

Undoubtedly in this context, the changing role of women is of major importance in education and needs to be looked into. Traditions and value systems are rooted in religion through the family as the basic cell of society.

Women in Societal Terms

Nelia Beth Scovill in 'Liberation of Women in Religious Sources' clarifies how ... "religion cannot be seen as oppressive many men and women know that at its fundamental core, their own religious tradition is egalitarian because it affirms that women and men are equally human." The common core for the major religions is that both men and women are equal creations because God created both men and women in His image, and they must be treated in social relations with the same dignity afforded to all human beings. This egalitarian core is present in religions if they all live up to it.

Eugene Lupri has made an in depth study of the advancement of women as distinct from Feminism. This is because culture and the socio-political context and the evolution of the community are an important matrix in which to study social change and women. Women's changing role has much to do with either the organic advancement of society or the imposition of ideology through political structure. Women first joined the work force in the Soviet Union as a communist regime that made no gender differences. The family and children were under the care of the state which ruled supreme. In predominantly Catholic countries like Italy and Spain, the study showed that an advancement of women's situation occurred through the organic evolution of society through change of life style. In the USA, the trend was different because women already had a dominant role on the ranches in pioneering days when they stood alone to tend children, territory and household. American women's role is a strong one as an independent breadwinner and manager but also because this role was transferred to the workplace and in society in general when eventually a shift from the farm to urbanization occurred. Lupri studied the concept of women's changing role in the context of several socio-political structures. Culture plays a great role as an embodiment of traditions and beliefs.

The Value System Based on Religious Traditions

Because of beliefs and value systems in religion and traditions, a multicultural community must address and combine similarities and deepen the concept of respect for the dignity of the human person and fundamental human rights.

Many religions do agree with these concepts. Difficulties lie in the fact that the major religions of the world very often distort their own religious base to the extent of extreme fundamentalism.

The operations of Civil Society depend on the formative approach of the individual in family and society. Therefore the link between family, and community both local and global

cannot be disregarded. Civil society is an agency for change and true democracy in the shaping of nations and their relationship with each other for a peaceful world. By reviewing the perspective of the human factor, not simply the person as an economic factor, will enhance the operations of civil society in a qualitative way. The connectedness factor will bring families and communities closer together. It is this dimension that is needed to achieve world peace. If social cohesion through families and communities fail, the future of societies could be self destructive through the lack of binding factors in an eco system that holds families and communities together.

As a recent Church Document addressing today's families, the *Familiaris Consortio* is particularly valid for the young and the future of society. It is considered as a guide to Christian maturity starting within the family to transmit those values that will enhance social justice and love for mankind. It is meant to enrich the content of education for the community in social responsibility. The Church felt the need to proclaim God's plan for marriage and the family as a renewal of society. In serving the family, the Church examines the needs and exigencies of today emerging from the situation of family life within the present social and physical environment. The Church takes particular interest in the search for the truth to serve mankind through the accumulation of wisdom and experience in relation to the dignity and freedom of the human person. The appreciation of social science is helpful in identifying the context through which the church can help families to discern the truth for the benefit of humanity. Although it is an important element, the supernatural sense of Faith to promote the gift of Faith must also be guided by evangelical discernment. Christian spouses are called to live their family life through this discernment. This is the base upon which the cultural value system is founded although some interpretations may differ according to circumstances. Even with so many rapid changes, these Christian values are deeply ingrained in a way that there may be distortions of interpretation but not a total denial of the cultural value system.

There is a lively awareness of personal freedom, a greater attention to the quality of interpersonal relationships in marriage to promote the dignity of women, responsible procreation and the education of children. "...There is also an awareness of the need of the development of interfamily relationships, for reciprocal and spiritual and material assistance, the rediscovery of the ecclesial mission proper to the family and its responsibility for the building of a more just society."

On the other hand, there is a degradation of some fundamental values in today's societies, the mistaken theoretical and practical concept of the independence of the spouses from each other, and a serious misconception between children and parents in terms of authority relationships. The family itself experiences great difficulties in the concrete transmission of values. There is also a growing mentality in the greater number of divorces, the practice of abortion, or sterilization and the mentality of contraceptives.

The Church considers these negative phenomena as arising out of the seeking of self gratification for one's well-being against others. It is accompanied by a corruption of the concept of the experience of freedom. Real poverty in the third world and the extreme world of consumerism and materialism that leaves the human person more insecure than ever adds

another dimension... Thus, married couples see the concept of a new life as a threat to oneself, an impoverishment of the generosity needed to raise new human life.

The document by Pope John Paul II concludes that this presents a historical picture of life as light and darkness. Within this context a conflicting situation arises in which the human person has to choose between the love of God above all else or the love of self.

In this environment, the circumstances are not congenial to a culture of family life for the construction and advancement of the human person. The primary objective is to rediscover the meaning of life and its fundamental values. Only through fundamental values can the human person make the best use of science as an ally to wisdom in the search for truth.

“Our era needs such wisdom more than bygone ages if the discoveries made by man are to be further humanized. For the future of the world stands in peril unless wiser people are forthcoming.”

Only in this context can culture through the family influence the building of a more just and fraternal world. The document continues to identify in great detail the significance and profound function and responsibility of the family in building an authentic community of persons. The dignity of both men and women underlies further explanation of the position of women in society to be harmonious with woman’s role of wife and mother and for the positive evolution of society that should be fully and truly human. The Pope’s recommendation is to study the “theology of work” i.e. the meaning of work in Christian life and the relationship between work and family. In the document, the elderly, the rights of the child and rearing of children are discussed. “The future of humanity passes by way of the family”.

In modern societies because of information technology and its impact on the place of work, some of the skills used are opportunistic in nature and thus create an individualistic mentality that needs re-education. The Church recognizes the family as the basic cell of society and promotes its welfare and education for the advancement of humanity.

Social Theorizing on a ‘Human’ Society or a Feeling Society

An interesting study by Benet Davetian focuses on what is a human society or rather a “feeling” one. “Emotional pain is a central pillar of social outcomes and it is time we studied how it is a product of the social as well as one of its major contaminants.” He disagrees with the ‘post-human phase’ idea. He argues that individualization is a social process that has deep psychological consequences for the individual because of the human body and its realities. He finds that today’s society imposes an environment where the individual’s behaviour is repressed in a different way.... “in a society riddled with pain what is felt and what is communicated are often out of sync with one another thereby affecting the nature of personal and social embodiment not to mention the civility ethos of the society in question.”

The consequences of repression have an impact on interaction, and ideology, particularly on civil behaviour (Janov 1975, 2000.) Therefore, a society of pain-riddled individuals will

tend to misperceive, under respond or over respond. Thus social interaction, rituals and social institutions dysfunction. Instead, they become symbols of the original discontent, far removed from reality. Social actions then lose their relationship with reality. This masking results in social policies meant to redress raging emotions without solving the social ills that they are meant to address.

In a simplistic way, social environment can transform personal experience but it is the person again who has to respond to the social environment. Contacting Benet Davetian of Canada, about a similar perspective of Malta's socio-political polarization, that I feel could have repressed the best characteristics of Maltese society regarding human assets; the author replied that it does seem that there is a connection between the individual and group processes.

I believe civil society will be effective the sooner if the "pain riddled syndrome" is dealt with in an open manner to leave space for a more transparently clear vision of realities without repressing the most substantial bits of communications. Unless this is done, we will continue to advocate policies that will not address the real issue. To illustrate, pointing at each other about criminality will alienate rather than address the real issue to solve it.

More study is needed to relate all the mentioned factors to the Maltese social landscape. Primarily the emphasis is on the fact that if we could recover the repressed human factor of spirituality, which is not so deep down that it cannot resurface; if all the anger is defused and social justice improves, a more peaceful path will follow.

Readings

Claes G.Ryn; Professor of Politics at the Catholic University of America, Humanitas Journal - Chairman of the National Humanities Institute, Editor of Humanitas

<http://www.nhinet.org/ryn12-2htm>

Professor Sue McGregor; Professor Faculty of Education, Mount St. Vincent University - Coordinator Peace and Conflict Studies, Principal Consultant for the McGregor consulting group. Home Economist BSc. MSc. PhD

<http://www.consultmcgregor.com>

Benet Davetian; Assistant Professor of Sociology - University of Prince Edward Island; Director of Civility Institute; Post Doctoral Fellowship Research Towards A Sociology of Civility and PhD. Sociology Sussex University Anthropology M.A. Sociology Concordia University Montreal B.A.(Hons) Sociology and Creative Writing Professional experience in media, excellence attainment seminar personal counselling and psychotherapy. Multicultural experience.

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RESPONDING TO THE NEEDS OF THE ASYLUM-SEEKING CHILD IN THE MALTESE EDUCATIONAL SYSTEM: SOME PROPOSALS

VICTOR MARTINELLI

Introduction

These last decades have seen a sizeable increase in transnational border crossings motivated by social conflict, poverty and political turmoil (Lee, 2005). Placed in the middle of the Mediterranean Sea, Malta suddenly started becoming a staging post in the irregular migration of people initially from the former Yugoslavia and Iraq and more recently from the southern shores of the Mediterranean to Europe (Texeira, 2006). A number of such irregular immigrants apply for refugee or humanitarian status protection to the Refugee Commissioner in Malta and in the case of unaccompanied individuals under 18 years of age, the state assumes the role of guardian of such children (Eurydice European Unit, 2004a). This paper will consider how the state of Malta can serve better the needs of the children brought over by adults seeking refugee or humanitarian protection status particularly those from Eritrea, Ethiopia and the Congo. The term “asylum seeker” will be used generically to cover both categories of migrants but not economic migrants. The term “irregular migrant” will be used generically to cover all such migrants where it is not possible to distinguish between the two categories. Some reference will be made to the Dutch experience of dealing with the issue of irregular migration in view of the fact that Malta is receiving some assistance from Holland in terms of training of personnel to work with asylum seekers under the Argo programme and in terms of resettlement of refugees (Times of Malta, 22nd March, 2006). Due to close cultural and historical links, reference will also be made to related Italian and United Kingdom experiences where applicable.

The prevailing situation calls out for immediate attention. In a bid to gain some respite from the boatloads of migrants arriving weekly during the summer months, a Maltese MEP was reported by the Malta Independent newspaper of 4th April 2006 as having called on the Commission to give its opinion on the proposed review of the Dublin II Regulation that, if applied to Malta, would modify the requirement that asylum seekers be processed in the state through which they enter the European Union.

The novelty of this phenomenon has meant that there is no specific legislation in Maltese law to cover the rights and needs of such irregular child migrants, whether they are accompanied or not. Legislation such as Legal Notice 259/2002 entitled ‘Migrant workers (Child Education) regulations’ and the Refugees Act, Act XX of 2000, is often brought to bear on this issue. Moreover, data regarding refugees, asylum seekers, and irregular immigrants are not immediately available and only recently has the Ministry for the Family and Social Solidarity set up a small unit to co-ordinate and manage data on aspects of the phenomenon of irregular migration. In June 2005 in a news release for World Refugee Day, the National Statistics Office (Malta) released figures to the effect that in 2001, about 22 children of African origin arrived in Malta. This statement was four years out of date! With increasingly larger numbers of African child asylum seekers as described in this same news release, one could estimate a local population of about 150 African children and youths under 18 years of age.

Overview of the Issue

Some research on the issue conducted with the Ministry for the Family and Social Solidarity would suggest that currently there are between 104 and 124 children of asylum seekers living in Malta, including unaccompanied minors. Not all such persons under 18 are of that age where school attendance is compulsory if one considers that education is only obligatory up to the age of 16 years in Malta. Furthermore, in view of the transient nature of the stay of these asylum seekers, it could be difficult to develop a clear picture of the temporal and evolving educational needs of such children.

In 2004, the Minister for the Family and Social Solidarity said that “many [refugee] children have been integrated in our schools” (Ministry of the Family and Social Solidarity, 2004). In the policy document *Irregular Immigrants, Refugees and Integration* published by the Ministry of the Family and Social Solidarity in 2005 it is stated that “unaccompanied minors are given access to educational and training opportunities through (i) their integration in existing education institutions” (p. 22) among others. One needs to add that in principle, this is also extended to accompanied minors and indeed, in theory, all persons under 18 years of age. Also, the same policy document issued by the Ministry for the Family and Social Solidarity emphasises that unaccompanied minors and families are treated as special cases. Praxis suggests that families are housed outside reception (detention) centres. Through *Kummissjoni Emigranti*, they are usually housed in the community as regular families with access to schooling and other social activities although this safety net may not be as effective as one would like to believe.

The Local Situation

The Eurydice Project *Integrating Immigrant Children into Schools in Europe* (Eurydice European Unit, 2004b) affords an overall view of how the needs of children of immigrants, regular or irregular are being met in Europe. Belgium, the Czech Republic, Greece, France, Ireland, Italy, Luxembourg, the Netherlands, Austria and Portugal explicitly permit school enrolment for the children of irregular immigrants. Furthermore, the right to education can also be considered to be implicit in other countries, including Malta, where there is no impediment to the enrolment of children who do not have legal residence status in the

country. Although this may give the impression that there is easy access to education for children of irregular migrants and others seeking humanitarian protection status, the country specific Eurydice report drawn up by Malta states that there is, as yet, no special provision for children of irregular immigrants (see table 1 below).

These children

are integrated into schools and are not deemed to be children with special needs...The enrolment of children of refugees and irregularly resident immigrants in mainstream schools is coordinated centrally by an Education Officer, who also offers consultative support to schools admitting these children. (Eurydice European Unit, Malta National Description, 2004c, pp. 4-5)

Furthermore, the RAXEN National Report for Malta (2004) says that the National Minimum Curriculum principles of Respect for Diversity and Inclusive Education are being respected in the case of migrant/refugee children. The report goes on to state that such children can avail themselves of all the services available to Maltese children and any inequalities that do exist are the result of linguistic, social and cultural barriers.

There is probably little or no discrimination in evidence in the educational sphere but there are few procedures that are specifically being put in place for these children. For example, in the large majority of cases, the Education Division allocates these children to age appropriate classes without giving much attention to the child's educational history where this exists. Very often, these children have few if any English language skills, let alone Maltese language skills and although it appears that such children do in effect catch up with other children on the language front in about a year there is little that is officially done to facilitate the process. The situation has been tenable so far simply because the number of children with such needs in our schools has been relatively small and few schools have more than four or five children on their roll.

If one were to consider the wider picture, these children are prone to suffer from high rates of educational under-achievement by virtue of their disadvantaged position. Some clue as to their situation is afforded by the results of the OECD PISA study published in December 2004 which suggests that even students whose parents are foreign born but who themselves have grown up in the country of resettlement and have spent their entire school career there experience a higher degree of educational underachievement than do other groups. In the Maltese context, the relative brevity of these children's stay usually precludes any in-depth analysis of their scholastic profile.

In contrast to the Maltese situation, the situation in Italy, a neighbouring country that is experiencing a similar problem with irregular immigration, is somewhat different for these children. Italy is one of the main destinations for unaccompanied immigrant children entering the EU (BBC Report, 2003). Like in Malta, unaccompanied minors are given access to education even if there is no guarantee that they will be allowed to stay in Italy after age 18 years.

The Eurydice European Unit, Italy National Description (2004c) states how where possible, foreign pupils are assigned to classes in which there are other foreign pupils who speak the

same language with no more than five foreign pupils being assigned to any one class. Furthermore, interpreting, reception and guidance for foreign pupils are provided by teachers at the school (support staff, language assistants). There is a concerted effort to teach these children Italian and in one survey conducted in the Marche region, the teaching of Italian as a second language was provided in almost all schools in the region and enjoyed a take-up rate of around 90%. More importantly, schools in Italy also use classroom assistants to provide support to immigrant children. Their main functions are to act as 'link persons' and as interpreters or translators. Their work thus focuses on providing assistance with respect to language issues.

Whereas Italy makes provision for smaller class sizes and intensive teaching of the language of instruction (Italian) and the UK makes arrangements for additional support for learning and adaptation of assessment procedures, Malta with close historical, linguistic and cultural links to both these countries has no similar services whatsoever in place for children of immigrants, irregular or otherwise.

This paper suggests how asylum seekers children's needs can be better met than is currently the case and always within a framework of inclusion practice. A number of heads of school were consulted with a view to identifying the main issues that such children experience at school and their perceived needs. It was not possible to interview service users due to time constraints, data protection and limited resources available to the writer but generally the experience of the heads was none too positive. They all expressed concern about not meeting the needs of such children or only managing to do so in informal, non-statutory ways. One would assume that the child asylum seeker

evokes strong feelings of protection and care in every person present. Yet his life and experiences are quite different from our lives and experiences and these differences limit our understanding (Engebrigtsen, 2003, p. 191).

Proposals for Improved Practice

Rijkschroeff, ten Dam, Duyvendak, de Gruijter and Pels (2005) identify socioeconomic, emancipatory and sociocultural dimensions in any programme that is implemented to support the needs of asylum seekers. Each of these constructs will be taken in turn and used to discuss relevant issues having a bearing on strategies that could be implemented locally to respond to asylum seekers children's needs.

Socioeconomic Dimension

Every family that is granted refugee or humanitarian protection status in Malta is, by definition trying to overcome social and cultural disadvantage and inherently some degree of educational disadvantage. Rijkschroeff et al. (2005) report that in Holland, the principle of an educational priority policy applied to a set of targeted measures, enables schools and welfare organizations to eliminate or reduce the educational disadvantage of pupils resulting from social, economic and cultural circumstances. Schools receive proportionately more facilities for ethnic minority pupils to reflect their greater disadvantage (a so-called weighting factor). The facilities are mainly used to form smaller classes in which the teacher

can give more individual attention to pupils and teach Dutch as a second language. Preschool and early school policy is also being developed, with a marked emphasis on family intervention and parent counselling.

With continued reference to the Dutch experience, whilst Rijkschroeff, Duyvendak, & Pels (2004) observe that the integration policy has mainly attempted to influence the resources available to ethnic minority pupils hence increasing their social capital, the mechanisms of inclusion and exclusion have barely been touched. They report that lower teacher expectations of pupils from an ethnic minority background persist with consequent negative influence on these pupils' opportunities to forge ahead (Farkas, 2003, Jungbluth, 2003).

In the Maltese context, in the absence of any particular legislation covering children of irregular migrants and ignoring the fact that some stay over only briefly, for any motivation to proactively respond to these children's needs, such children need to be considered as a permanent feature of the school system in which they are being offered an education. This ensures that all necessary support be made available to them and that a long term plan for their education be drawn up, even with the eventual aim of this being communicated to another school if and when the child has been resettled in a different country. Within this framework, it is broadly contended that children of asylum seekers should indeed be deemed to have special educational needs by virtue of the fact that they have left their country of origin, usually experienced a harrowing passage to Malta and have been allocated to a school which may find it difficult to recognise their immediate educational needs. This has implications for the educational provision of these children.

The Emancipatory Dimension

Within the Dutch context the objective of the general emancipation policy is to create conditions for a diverse society in which everyone, irrespective of gender or other principles of social stratification has the opportunity to lead an independent existence (Sociaal en Cultureel Planbureau & Centraal Bureau voor de Statistiek, 2002). Within the Maltese context, the issue of education as an emancipatory tool is underwritten by the spirit of the Maltese Education Act and also by the Maltese Equal Opportunities (Persons with Disability) Act. Also, the Salamanca Statement to which Malta is a signatory is promoted as meaning education for all. "Inclusive education should encompass all ... ethnic minorities ... the disabled and destitute, child labourers, street children and orphans and victims of wars, violence and natural disasters" (Tomlinson, 2003, p. 218). In reality, the situation in Malta is such that few tangible procedures are being implemented to enhance the emancipatory dimension of inclusive education for the children of asylum seekers and these children are included without any tangible proactive strategy being implemented for their so called inclusion.

The Sociocultural Dimension

The (Dutch) Educational Incentive Policy (OC&W, 1974) initially focused on 'education in the language and culture of the country of origin'. This focus made way for 'acculturation and integration' enabling members of minority groups to participate and function in the socio-economic, social and democratic aspects of Dutch society, with the possibility of

doing so from their own cultural background (OC&W, 1981, p. 6). Since this policy document was written, the preservation of the child's language and culture of origin started being seen as constituting an obstacle to successful integration. The Dutch were not alone to go in this direction as has been indicated elsewhere in Driessen (2000), Rijkschroeff et al. (2005) and Tomlinson (2003). In the case of children of asylum seekers in Malta, it would make sense to start children on an acculturation programme specific to the Maltese context although of course, the children's stay in Malta could serve as an opportunity to start such a process with a view to eventual acculturation in the country of eventual resettlement, when this is the case.

Proposals

In view of the situation described above, the writer would like to suggest the following;

1. a call for the support of social workers who have some knowledge of the process that such children could be passing through and who acknowledge the difficulties and possible traumas that they have experienced in the country of origin;
2. identification of the need for specific language support at school for English and/or Maltese;
3. identification of the need for learning support in all subjects and the drawing up of a statement of achievement and development needs that will accompany the child to the resettlement country if and when refugee status is awarded;
4. identification of the need for recognition of the cultural needs and beliefs of the child by his/her class and raising the receiving class' awareness of the immigrant child's richness and diversity of native language, customs, beliefs and ethnicity but also a recognition of the need for this child to become acculturated to a broader European culture;
5. identification of the need for liaison with family about the progress of application for refugee status in a different country;

Each proposal will now be looked at more closely and considered against the background of similar procedures in place in other countries where possible.

Proposal 1

Case workers and social workers need to be trained to deal with what are perceived to be issues relevant to the needs of such children even if the interpretation of clients' needs is a political process and raises questions about the validity of such expert knowledge (Fraser, 1989). Christie (2003) reports that in the Irish experience, the living conditions of many of the children of asylum seekers give cause for concern. Fanning, Veale & O'Connor, (2001) report that in Ireland such migrant children suffer from extreme material deprivation despite the best efforts of their parents to use their meagre cash allowances sensibly.

In the Maltese situation, social workers working with children of asylum seekers invariably work with individuals and families who have uncertain futures and often traumatic pasts. Whilst one may consider integration into Maltese society to be one way of overcoming past traumas, this may be unhelpful if the child's future in Malta is uncertain. There is an ongoing need to acknowledge the potential impact that leaving their country of origin has on these children and the possible desire to keep in touch with their country and culture of origin as suggested by Christie (2003) even if this may run counter to acculturation policies. These issues represent an important backdrop to the intervention of social workers with this group of children, particularly in view of the fact that a number of heads of school have used the term "dumped in our school" for children of irregular migrants because of the dearth of services that they deem to be available to them. In particular, social workers need to develop schedules for assessment of children's needs and for the development of a care plan. This will render their intervention more effective than has proved to be the case up to now.

Proposal 2

In a situation where children of asylum seekers are almost definitely not going to be staying in Malta for long because as is indicated in the RAXEN National Report for Malta (2004) they vanish overnight and without warning to continue their journey to their chosen destination, it would make little sense to teach these children Maltese. Alternatively it would be much more useful to these children if they were taught English. However, the current policy is that these children learn Maltese like any other child in Maltese state schools. If Maltese were to be dispensed with, then the time allocated to teaching the Maltese language could be used to teach English. This would give the learner a useful tool that he or she could put to good use in a number of possible resettlement countries. Where families of children opt to settle in Malta, then increased support in the two languages would need to be a priority for these children.

The praxis in accommodating the educational needs of children with stated learning difficulties in Malta is to have a somewhat reduced class size along with a learning support assistant, locally referred to as a facilitator. This is an arrangement that can be extended to those classes where there are children of asylum seekers. In the case where there is just one child, class size can be reduced to allow the teacher more time to support this one child. Where there are more children, a learning support assistant can be assigned to them to assist them in class, not necessarily on a one to one basis because this in itself could single them out from their peers, but as members of a larger and changing group of children with individual educational needs.

The Eurydice European Unit Project (2004b) lists the arrangements made for such children across a number of European countries and these include not only smaller class sizes but also after-school sessions to assist pupils and students with school work, specific language teaching and even the specific training of teachers who can respond to the needs of these children. In Scotland, for example, the list of competences that future teachers are expected to be able to demonstrate on completion of their courses includes "the ability to respond appropriately to gender, social, cultural, linguistic and religious differences among pupils [and] sensitive and positive attitudes towards differences (e.g. gender, social, cultural,

religious, linguistic) amongst pupils” (p. 63). Establishing these requirements across the board would enhance any teacher’s capabilities for teaching all children and would certainly go some way towards equipping teachers to respond to the individual needs of all specific groups of children.

Proposal 3

In keeping with the findings of the OECD PISA (2004) study, children coming from different ethnic backgrounds to foreign born parents under-perform in comparison to other children in the study. This finding holds implications for children of asylum seekers educated in Maltese schools. How do they compare with Maltese peers after some time in the system, keeping in mind the deleterious effect of linguistic and cultural differences? What standardised ability, literacy and arithmetical measures are available for such comparison? How can educational needs be clearly identified and an individual support programme instituted where necessary? Can one make a case for adapted assessment practices for these children in the early part of their stay in Malta should this be long enough to warrant such assessment? It is posited that a detailed portfolio of abilities and achievements should be maintained for such children, indeed all children, with a view to developing longitudinal data that can be harvested for identifying specific educational needs for this group of pupils and students. This proposal calls for resources that may not currently be available within the Maltese educational system but which the writer deems to be essential if more than unsupported inclusion is to be practised with this client group. If the Maltese educational system eventually becomes decentralised as suggested in *For All Children To Succeed* (2005) such that a system of colleges with regional secondary schools linked to feeder primary schools becomes the general model of administrative practice, then a relatively seamless system may need to be instituted for the positive discrimination of these children throughout the whole of their school career. Furthermore, if budget management is devolved in such a way that schools can budget for such services, then learning support in all subjects in particular, could be budgeted for along with the support needs of all other children in the college. It would therefore be fitting that any educational assessment and profiling conducted in Malta should go towards the compilation of a profile of the child’s educational, social and psychological needs, with a view to this being forwarded to the country of resettlement when this is the case. At this point in time, such a document may have limited validity due to the fact that such a procedure is not fully in place for regular schoolgoers in Malta, let alone refugee children. However, this is an issue that in the writer’s opinion needs to be addressed if the time spent in Malta having one’s refugee or humanitarian status application processed is to be profitably utilised by the child’s eventual service provider.

Proposal 4

The need for recognition of the cultural needs and beliefs of the child by his/her class and raising receiving class’ awareness of the immigrant child’s richness and diversity of native language, customs, beliefs and ethnicity is necessary for the full inclusion of the child of refugee parents. It is also deemed necessary for the child who will in all likelihood be resettled in a European country to become acculturated to a broader European culture. Fanning, Veale & O’Connor (2001) remark how acculturation can be stressful for children

and can impact negatively on their mental health with concerns about psychosomatic health problems or reported behavioural difficulties in school. They report how in workshops with children it was evident that some children were experiencing enormous difficulty in making sense of their social world, and children had to struggle with losses of family and culture. Ager (1996) too makes a case for intervention for refugee and asylum-seeking children that should include the strengthening of broad systems of support, such as family networks, programmes to restore social relations, and giving asylum seekers skills to strengthen their own support systems. For children in school, teachers can play a pivotal role in helping migrant and Maltese children bridge their two cultural worlds, thereby supporting the re-emergence of trust and social confidence.

In the Maltese experience, the RAXEN National Report for Malta (2004) refers to the diversity clause in the Maltese National Curriculum. On page 25 of the document there is an explicit statement that “in a democratic society, all voices are not only heard but also respected...[in an atmosphere of] social justice and solidarity”. Furthermore, the RAXEN report lists a number of activities undertaken by a number of Maltese schools intended to broaden children’s cultural understanding and promote equal opportunities and equity. This is indeed one way of responding to the needs of these children but the writer is of the opinion that such procedures may prove fruitless unless they are preceded by improved social work support, language support and broader understanding of such children’s individual learning needs.

Proposal 5

It needs to be said that the large majority of refuge or humanitarian seekers who enter Malta do so to be somewhere else. In the majority of the cases, those who are granted refugee or humanitarian status file applications for eventual resettlement in other countries. If the child’s best interests are to be kept uppermost in the parents’ and the educators’ minds, then one may need to consider the need for regular briefing sessions at which all concerned parties would be invited to attend in order to update one and all about the status of the family’s application for eventual resettlement and the time scales involved. The adoption of such a procedure would serve as liaison for social workers/case workers, teachers and school administrators and other officials involved in the asylum seeking family’s plight. This procedure would assist all involved to streamline efforts and in the case of the first two categories of service providers listed above, prepare the child for departure and resettlement if this is the case or adapt the teaching experience to the child’s needs if he or she is likely to stay in Malta indefinitely.

Conclusion

This phenomenon of irregular migration is unlikely to subside in the next few years and one may well consider it to be a relatively permanent characteristic of life in the Mediterranean in the early part of this current century (Texiere, 2006). It is only sensible to assume that if the needs of asylum seeking families are to be responded to in a humane and effective manner, then all of the above proposals must be put in place for ensuring a modicum of adequacy in terms of services and assistance. The proposals made are simply indicators of what can be implemented locally with the aim of eventually developing an integrated

educational programme that does justice to the needs of children of irregular migrants. Most suggestions are within the manpower and resource capabilities of the Maltese state. I have purposely not listed such suggestions as employing the use of translators in the schools' early dealings with such children and their parents, or the early admission of these children to school for language learning purposes because the manpower may not be present in terms of competent translators and trained nursery staff. It is envisaged that these proposals hold implications for the training of certain key personnel to respond to the needs of this identified sector of our society, the continued training of others and the addition of human resources where needed. Ultimately, learners from diverse multicultural groups and children with disabilities, who may as well form part of this immigrant group, will continue to challenge schools and those providing educational support services. The development of culturally sensitive assessment and intervention strategies, multicultural consultation, and professional training needs to take place. Structured along the lines of awareness, knowledge, and skills development, such actions will enhance diversity within the school environment such that the diverse student may be conceptualised as an exciting element of the world we live in, and not as a hindrance to the educational process (Sanchez, 1995). The drawbridge to fortress Europe is being lowered for genuine asylum seeking families. It is the state's duty to facilitate this process on humanitarian grounds for the eventual inclusion of such children into our society.

Table 1

Figure 4.4: Types of support offered to immigrant children in pre-primary and full-time compulsory education, 2003/04

		BE fr	BE de	BE nl	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	SI	SK	FI	SE	UK ENG/ WLS/NIR	SCT	IS	LI	NO	BG	RO	
A	A1	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	■	■	●	●	●	●	●	●	●	●	●	●	●	(-)	●	■	●	
	A2			●	●		●										●	●	■	■							●	●	●	●		(-)	●	■	
	A3							●							●	●			■	■							●	●			(-)	●	■		
B	B1	●	●	●	●				●	●				●				■	■				●	●	●	●	●	●	●		(-)	●	■	●	
	B2				●		●							●					■	■	●			●	●	●	●	●			(-)	●	■		
C					●		●				●		●			●			■	■	●	●			●						(-)	●	■		
A	Language support	A1 Intensive teaching of the language of instruction																																	
		A2 Introduction to the language of instruction at pre-primary level																																	
		A3 Bilingual tuition (in the mother tongue/language of instruction)																																	
B	Educational support	B1 Additional support for learning																																	
		B2 Adaptation of assessment																																	
C		Smaller class sizes/special norms governing the composition of classes																																	
		● Existence of support measures for immigrant children																																	
		■ No support measures for immigrant children																																	

Source: Eurydice European Unit, 2004b, p. 46

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THE POTENTIAL FOR CHANGE: EUROPEANIZATION, CIVIL SOCIETY AND ETHICS

MARK HARWOOD

Europeanization aims to analyse domestic change caused by European integration.¹ The European Union has assumed greater and greater significance over the lives of its citizens as its borders continue to enlarge, its competence increase and its complex network of official and unofficial decision-making become more embedded within a multi-level system of governance that brings governments and civil society from across the twenty-five members into greater contact. In this environment, domestic political systems and actors change and adapt. That change is what dominates current research in Europeanization. The easiest and most recognizable impact of Europeanization is upon government structures, processes and policies. But attention has also come to be focused upon how EU membership impacts civil society and, more importantly, norms and values. While research in these areas is still in its infancy, this paper will seek to outline what Europeanization is, how it impacts its domestic political systems and what consequences it may have for civil society and the values that civil society groups promote.

Europeanization as a Research Agenda

Europeanization is a buzz-word. It can be found in various academic disciplines, ranging from anthropology and law to economics and sociology but has, at best, been little more than a label attached to any phenomenon associated with the EU or even Europe in general. In the area of European Studies it only emerged as a concept some twenty years ago. However, European Studies was largely preoccupied with charting developments at a European level, analysing why integration was happening and what was the result in terms of supra-national structures. The impact of European-level developments on the domestic political systems of each member state was largely ignored.

This supra-national preoccupation began to change in the 1990s, helped in no small part by the Single European Act and the Treaty on European Union, developments which extended the EU's competence into many new spheres, as well as increasing the power of the European Parliament. As Brussels gained greater power over more and more policy areas, it

¹ Borzel and Risse, 2000.

was logical to postulate that the EU's influence over domestic policy was increasing rapidly and that this increasing shift in decision-making to Brussels would impact government structures; more and more national bureaucrats would have to work on EU issues or with the EU directly. It was also logical to expect that the increasing power of the EU would foster the proliferation of political and bureaucratic links across 'Europe' as governments scrambled to establish alliances amongst themselves in order to defend their national interests/priorities within the Council. Government also had to prioritise the coordination of EU policies: From old members to new ones, ministries sprouted EU-related offices, central coordinating structures and national parliaments established offices and committees to deal with the additional load of having to debate EU issues.

Most of the early Europeanization research shared two fundamental features. The first was that, as the EU's principal influence was in creating policy, then the main stimulus for change at the national level would stem from policy changes as well; National adaptation would centre on making the necessary changes to national policy to become compliant with the EU's policy in the diverse areas where the EU had competence. If national policy was significantly different from what the EU was stipulating, then a large degree of change was necessitated, whether changes to government structures or processes as well as the actual policy itself. If the difference between the two was small, then adaptation would also be relatively small.

In addition to a general consensus that Europeanization was policy-driven, the second feature was the fact that academics believed that the principal impact of the EU would be on government structures and processes. It was the government (taking government to be the executive in its entirety, including bureaucracy) which came into contact with the EU institutions and it was the government which controlled and determined both domestic and, in union with the other member states, EU policy.

However, it became increasingly clear that both of these features were far too narrow and restricted to actually reflect the reality of how the EU was impacting upon domestic political systems. Another related misconception from this period was the popular notion that, as EU policy was the same across the Union, member states were adapting in a similar fashion and that, eventually, all EU members would come to resemble each other, one model state for the EU.² Research quickly showed that member states tackled the obligation of adapting to the same policy in very different ways and that the likelihood of the EU becoming a Union of twenty-five (or more) identical states was highly improbable.

Our ideas of Europeanization have developed in two key directions, namely the domains of Europeanization (what actual changes take place at the national level) and in the mechanisms of Europeanization (what stimulates change and what controls the transfer of EU integration into national outcomes).

Europeanization as an Evolving Concept

Europeanization is now understood to be a much wider and idiosyncratic process than hitherto thought. Countries adapt but do so within the confines of their own particular

² Wessels *et al* (2003).

circumstances while change is now associated with a broad range of actors, from central government to bureaucracy, from political parties to interest groups, and manifests itself in various ways, including changes to how governments do business and to the values and expectations of society in general. These various domains of Europeanization are illustrated in Table 1.

Extending the focus of research to the various domains listed below reflected an increasing reality to be seen throughout the European Union after Maastricht. This included the fact that the EU's increased competence, and the greater power given to the European Parliament, increasingly brought more and more domestic actors into EU decision-making, both as active partners but also as increasingly concerned observers.

Table 1: Domains of Europeanization
<p>Domestic Structures</p> <ul style="list-style-type: none"> Political structures <ul style="list-style-type: none"> Institutions Public Administration Intergovernmental relations Legal structures Structure of representation <ul style="list-style-type: none"> Political parties Pressure groups Societal-cleavage structures <p>Public Policy</p> <ul style="list-style-type: none"> Actors Policy problems Style Instruments Resources <p>Cognitive and normative structures</p> <ul style="list-style-type: none"> Discourse Norms and values Political legitimacy Identities State traditions Policy paradigms, frames

Source: Featherstone and Radaelli (2003)

Lobbying activity in Brussels also increased exponentially after the SEA and the Maastricht Treaty and the steps towards a more complex multi-level polity (including the extension of

Qualified Majority Voting within the Council) meant that more and more domestic actors were involved in EU issues. An example was seen in the area of interest groups where areas of direct concern to groups increasingly came under those areas of EU competence; national governments were only one component in arriving at the final decision but, because of the use of QMV within the Council, not even the national government was strong enough to stop changes which might have had negative consequences for particular groups, meaning that interest groups had to look beyond the national government to try and guarantee greater support for their interests (by lobbying the Commission or approaching MEPs).

At the same time, it was recognised that while EU policies could bring about domestic change, there was also a more widespread effect of EU membership; domestic structures and actors (including civil society) could in turn be affected by changes in government brought about by the European Union and that, in turn, could cause further changes outside the parameters of government. At the same time, the inability of governments to guarantee outcomes that depended on EU decision-making could alter the expectations and views held by actors of the importance and role of governments.

The growing awareness of the implications of EU membership has been encapsulated in Radaelli's much quoted definition of Europeanization as 'processes of (a) construction (b) diffusion and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies'.³

With this greater awareness of the complexity of what constitutes Europeanization, research has increasingly focused upon the mechanisms of Europeanization, namely what stimulates change at the national level and what domestic factors condition the national response to those stimuli.

The Mechanisms of Europeanization

Europeanization is now believed to be a much more complex process than hitherto thought. In terms of stimulus, two related factors have emerged. The first, and the most complex, is the difficulty of differentiating change stemming from European integration from other factors which bring about change at the domestic level. Countries may adapt due to their own internal forces, including modernisation or the adoption of new public management policies amongst others. In the case of many southern European states, EU membership went hand-in-hand with modernisation, the European Communities constituting a template around which wider change happened.⁴ In this context, it can be almost impossible to map domestic changes to European integration as developments may not depend totally on European forces.

In relation to norms and values, it has often been argued that the Council of Europe has been more instrumental in bringing about change than the European Union even though the Council of Europe would not, immediately, fall under our definition of Europeanization,

³ Radaelli as quoted in Bulmer and Lequesne, 2005: pg 12.

⁴ Featherstone and Kazamias (2001).

which increasingly is exclusively used in relation to the EU, some even preferring to use the term ‘EU-ization’. The situation becomes even more complex when we take globalization forces into consideration.

The second factor to have emerged relates to the varying stimuli which the EU creates and which bring about change. Originally, academics had taken EU policy-making to relate to traditional areas of EU competence, such as agricultural or transport policy. In this context it was easy to evaluate the degree to which national policies complied with EU policy and then to map Europeanization by following the national adoption of EU law. However, time has shown that this approach was too simplistic and it is now assumed that Europeanization can occur due to three different types of ‘policy’, or integration, coming from Brussels, namely positive, negative and framing integration.

‘Positive integration’ is taken to be ‘market-shaping’ policies which stipulate how something should be done by intervening in the market and involving a broader, institutional change. ‘Negative integration’, on the other hand, denotes ‘market-making’ policies that actually attempt to restrict the government’s control over policies and involve a rolling back of the state. As such, it does not provide a model of integration but an indication of what the domestic model should *not* be. In this context, how each member state implements this policy will be idiosyncratic. Finally, ‘framing integration’ is a more ideational ‘force’, weaker and more difficult to define, establishing a set of norms in areas where there is a lack of support for greater cooperation amongst the member states. With the Open Method of Co-ordination, facilitated cooperation has become an increasingly conspicuous stimulus for change though almost impossible to adequately map. An example cited by Kohler-Koch was the Commission’s propagation of the principle of cooperative governance in order to improve European regional development.⁵

But understanding the differential impact of EU membership due to the differing policy types is only half of the story as to why countries adapt differently to Europe. In between the stimulus for change and the outcome of Europeanization at the domestic level, we now understand that a series of mediating factors exist which condition change. They act, in a way, as communicators of the impulse for change and, as such, can determine the nature of domestic reforms. A range of such factors include the following, though it should be stressed that mediating factors depend on differing approaches to the study of institution which this article does not have the space to go into.

Mediating factors include:

- Institutional traditions⁶
- Executive leadership within the institution
- The administrative reform capacity of the institution and timing (is the change timed while the institution/country is already reforming?)
- The presence of legitimising policy discourse.⁷

⁵ Kohler-Koch, 2002.

⁶ Cowles, Caporaso and Risse, 2001: pg 120.

⁷ Featherstone and Radaelli, 2003: pg 47.

- Norm entrepreneurs (epistemic and advocacy communities which actively promote change based on the new European context)
- Cooperative informal institutions (informal understandings of correct institutional behaviour and the logic of change)
- multiple veto players (the more there are the greater the difficulty in bringing about change)
- facilitating formal institutions (opportunities for actors to organise themselves around new structures and therefore increase their relative power)

In this way, Europeanization is understood to be a process that brings about domestic change in institutions, processes and values; but that change is conditioned by the nature of the EU-derived impulse and the mediating factors which determine and control domestic change, whether individual actors, institutional traditions or the willingness to implement what the EU is advocating change in. The multiplicity of outcomes that can stem from this highly complex process is reflected in the fact that academics now accept that Europeanization will not always result in successful adaptation but can, at times, have the opposite result. This can be seen in Table 2.

Table 2 The Degree of Adaptation		
Degree of Adaptation Needed	Domestic response	Degree of change
Limited Adaptation	Absorption	Limited changes to processes, policies and institutions
Larger degree of Adaptation	Accommodation	Relatively large changes to domestic structures and processes but changes which do not alter the essential characteristics of the institution
Substantial degree of Adaptation	1. Transformation	Old structures or processes replaced by radically new ones
	2. Inertia	Large resistance to change with result that no change takes place though change is needed
	3. Retrenchment	Structures and processes actually regress, adopting former and even more unsuitable responses to the misfit

Europeanization, Civil Society and Values

The greatest factor which points towards an impact of EU membership on civil society stems from the increasing tendency to conceptualise the EU as constituting a multi-level governance system which offers countless opportunities and pitfalls for the civil society of each member state. Civil society groups, in wishing to protect their interests, may need to shift their focus to the European level should their area of concern constitute an area of EU competence. However, even at a national level, interaction with the EU or with other similar-minded groups from across Europe may be desirable. The European level offers opportunities for groups to consolidate their domestic influence by acquiring EU-level influence or gaining from association with larger and more powerful groups abroad. It is seen as inevitable that, at some stage or other, civil society will come across and interact with the wider European governance system, even if their concerns are wholly domestic. It is in negotiating this multilevel governance system that some Europeanization is expected, though, as already indicated, Europeanization can also accrue from contacts with those, particularly in public administration, who are themselves working closely with the EU.

What has been observed in this context is that, while EU membership may challenge civil society to seek European-level contacts (most national groups eventually join a European umbrella organisation of sorts, unless time and money preclude this), domestic civil society retains its primacy as a determinant in the national political system and in the coordination of EU affairs. European level groups have significant advantages and powers, but it is national civil society which has the ear of domestic governments, MEPs and representatives in bodies such as the Committee of the Regions. While Europeanization brings about change, it does not appear to have brought about a diminishing of the role of civil society within the domestic arena, the most important venue for most civil society groups. In some cases it has actually augmented national influence and organisational capacity as can be seen within the Maltese political system in terms of the opportunities offered to, and seized upon by, local environmental groups to raise their concerns at the European and Maltese level.⁸

While Europeanization does not undermine the power and opportunities open to groups at the national level, civil society has a long history of participating at the European level with the Commission, in particular, having encouraged this activity. However, while logic would imply that EU membership should radically affect civil society activity, certain factors have restricted the radical impact that Europeanization was expected to cause directly to civil society groups.

In the first place, each domestic political system is unique. In each system, the role, characteristics and features of civil society is different. These differences may be a product of the divergent representation systems different countries have (pluralist, corporatist, statist) or because of political culture, but that unique bundle of features means that civil society remains constituted around the domestic political system, defined very much in terms of their role within that domestic political system and, apart from promotional groups which may find it easy to seek European-level alliances, many civil society groups can actually find it difficult to find suitable and like-minded partners across Europe. Therefore,

⁸ Bulmer and Lequesne (2005): pg 318.

civil society groups may actually choose to ignore the European level should it have little consequence for the group's national standing and the power to effect domestic change through influence. Europeanization thus comes to depend more on the general commitment of the government to European integration and the national importance given to EU decision-making and less an automatic reaction to European integration.

The importance of the domestic political system for conditioning changes in civil society is further reinforced by the principal features of domestic politics, namely that certain civil society groups may have privileged relations with certain political parties or even the government. Importance and influence therefore have a largely domestic context which would indicate a certain futility in seeking to accommodate the European-level. Related to this, a government which is prepared to defend the interest of certain groups within the Council of Ministers further consolidates the logic of not needing to adapt immediately to changes caused by membership as the domestic political system remains the defining key to activity for such groups.

Related to this factor one must also mention that civil society groups may also find themselves isolated at the European level. Attempts to join umbrella groups or to strike up alliances across Europe may not always result in positive feedback. The inability to find European-level groups to join can further drive groups away from focusing on the European level and this can also act as a stimulus away from adapting to EU membership. Most umbrella groups deal with politics of the lowest common denominator, attempting to ensure backing from large groups of often disparate national associations. The effectiveness of such groups to defend particular national concerns is thus compromised and their utility equally undermined.

In the case of Maltese civil society, it must also be taken into consideration that they operate within certain limitations. Resources make activity highly selective, both because of financial constraints but also a lack of human resources. In turn, a European-level strategy must operate alongside domestic priorities with a splitting of time and money. Deciding whether one has the luxury to try and interact at the European level is the first hurdle and one that many groups may decide not to tackle. This further consolidates the importance of the domestic political system and further limits the effects of Europeanization other than as a consequence of the wider changes in the central structures of domestic political administration. It is in terms of that central administration that Europeanization of civil society can best be measured.

In terms of the above, a central question to ask is whether EU membership alters the position of civil society groups in their standing with their prime target, namely the government. In this respect, EU membership is believed to have two principal effects. In the case of groups whose areas of interest are transferred to the European level, the result can be that influence is actually diluted as the national government is not the sole source for policy. The government may be unable to defend all its interests at the European level and, therefore, the group loses out within the overall political system because it cannot guarantee outcomes. In a perverse way, the government loses its primacy as the sole target.

However, conversely, civil society groups can see their influence increased, especially when the EU becomes involved in a policy area and certain EU institutions, in particular the Commission, are open to consultation with the domestic interest groups concerned. The outcome is that groups which may not have had much influence over domestic decision-makers actually see their importance increase due to the importance given to them by EU institutions or European-level groups. It can be argued that local environmental groups, as potential whistle blowers with the Commission, are more likely to gain the ear of the Maltese administration as the government seeks to control and minimise unrest in a highly sensitive policy area.

One factor that seems assured is that domestic civil society endures, even after membership. This appears to be the product of the efforts made by civil society to protect its interests and develop European-level strategies to promote those interests. Rather than be supplanted by European-level groups, this concerted attempt to assert influence at the European level by domestic groups has maintained their importance. Ultimately, groups have found that no single umbrella group can be guaranteed to protect the interests of every member, and their *raison d'être* remains.

This continued importance is consolidated by changes in the way governments do business. The coordination of national EU policy, the need to create effective reaction to EU proposals and to follow up to ensure its implementation, have resulted in countries being more assiduous in the consultation of groups. It may take time and may not be immediate on membership but member states find effective consultation with civil society ensures that priorities are better articulated within the confines of the national EU policy, that this guards against possible negative press at the EU level (with national interest groups using other EU institutions such as the Commission or the EP to work against their own government) as well as ensuring that implementation is facilitated by the cooperation of civil society. This opportunity for greater civil society consultation can be seen in the run up to EU membership with the creation of the Malta-EU Steering and Action Committee and may be operative in the future with the Malta in Europe Forum, though the latter is not yet fully operational and as yet unable to meet the requirements of Maltese civil society.

In terms of norms, the research on how EU membership impacts our collective values as a society is still very much in its infancy. European integration may well have influenced the development of collective values in the original member states, countries which have been cooperating at a regional level for nearly sixty years, but new members are unlikely to have seen the impact of EU membership at the normative level of collective values. Countries such as Malta and Cyprus may well have seen a greater impact from membership of the Council of Europe or the original OSCE, institutions of which they have been members for some decades now. The inclusion of the 'EU Flag' on Maltese number-plates some years before membership of the EU was as a consequence of Malta's membership of the Council of Europe but reflected the need, both at the individual and national level, for the country to re-affirm its European credentials.

One of the clearest areas where membership can impact collective values is in relation to our expectations of government and institutions. The Ombudsman's Office was established over ten years ago in Malta but the run-up to membership also saw much emphasis upon the

opportunities offered to Maltese citizens to have redress to the European ombudsman, amongst other institutions such as the European Court of Justice and the Commission. It shows an increased awareness, within a short period, of what an ombudsman does, what can be expected and the 'security' such structures offer for citizens to feel they are protected from their own governments. The local councils have also had a similar effect. Having been established for over thirteen years, many Maltese now accept that central government cannot arbitrate in local issues such as polemics over wardens or the state of cleanliness of certain areas. This shows that certain normative issues such as what we expect and do not expect from central government can change over time.

Much the same happens with EU membership though two years is far too short a period to expect any substantial changes. If anything, we are most likely still learning what to expect from European institutions as well as the limitations of the national government to defend all national interests at the European level. This was noted in the run-up to, and the aftermath of, EU membership: Many still question why the Commission cannot intervene in the issue of Maltese rent laws while concern that the EU could undermine Malta's anti-abortion stance necessitated the inclusion of a specific protocol in the Accession Treaty. As a society, we are starting to develop clear understandings of what can and cannot be expected from the EU institutions while also starting to appreciate the limitations of the national Government in this wider, European polity. The Government's attempts to involve its European partners in helping with the influx of large numbers of immigrants shows the limitations of the EU while popular concepts of the power of the European Parliament may be undermined once initiatives to change aspects of Dublin II will, most likely, fail to gain backing within the Council.

On a wider level, research has been undertaken to analyse how EU membership has an impact on diverse normative issues such as gender equality and citizenship. In relation to citizenship, norms or values may change for two principal reasons. Firstly, collective values may change because of new understandings of interests and identities (normally transmitted via individual actors or interest groups) or, secondly, they may change because EU membership 'constrains' the choices and behaviour of domestic groups with particular identities. What is also highly interesting is that the development of changes to collective identities, especially in relation to citizenship, take place, in part, outside the EU mainframe; European integration and the creation of a European polity are central to the development of changes in concepts of citizenship but so too is a more nebulous European discourse which takes place outside the EU structure and which offers alternative concepts upon which national groups can build new, collective identities. In particular, the federalist movement in Europe can be seen as an important initiative to develop alternative concepts of collective identity to which national groups could interact 'with' or 'against'.

In conclusion, the limited research on the Europeanization of civil society groups and the values they promote can be said to show that EU membership;

- Offers a multilevel political system in which civil society can devise new avenues for activity, activity which has been encouraged by the Commission.
- Europeanization may not flow simply from membership. The importance of the domestic political system means that groups often change as a consequence of

changes in their standing with government and not as a direct consequence of EU stimuli.

- This gap between the stimuli and the resultant change means that other mediating factors play a determining role, namely changes to government processes and the role played by civil society groups in domestic political systems.
- The need to better coordinate national EU policy means that governments are traditionally more likely to incorporate civil society into decisions.
- This seems to imply that it is in governments' interests to better consult with civil society and this willingness to consult will determine the rate of Europeanization of domestic groups.
- The change in values associated with EU membership still remains a nebulous area of research. Collective expectations of national and European institutions change over time but more disparate issues such as concepts of family, gender or citizenship often change within a wider framework, not exclusively associated with EU membership. This makes EU-ization a component of change but not an exclusive component, thus rendering it only partial Europeanization (within the confines of the concept's parameters mentioned above).

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**A CLOSER LOOK
AT MALTA**

GENDERED ROLES AND GENDERED ORGANISATIONS AND THEIR EFFECT ON WORK AND PRIVATE LIFE

ANNA BORG

Aims and Background

As early as 1974 the European Union, or the European Economic Community as it was then known, was suggesting action which would enable women and men to reconcile the demands of remunerated work with the demands of non-remunerated work related to the home and the family (Scheibl, 1999).

Throughout the years, the EU has been fundamental in bringing about key pieces of legislation which promote gender equality at work through the *Equal Pay Directive -1975*); *the Equal Treatment Directive - 1976* the *Social Security Directive - 1979* the *Occupational Social Security Directive - 1986*, the *Self-employment Directive - 1986*, the *Pregnant Workers Directive - 1992*, the *Parental Leave Directive - 1996*, the *Burden of Proof Directive - 1996*, the *Equal Treatment in Employment Direct - 2002* and the *Goods and Services Directive 2004*. However till this day there is no directive which focuses directly on the reconciliation of work and private life

Indeed more than three decades after the first Equal Pay Directive (1975) the European Commission is still debating and searching for solutions on how to tackle the issue of balancing work with family life. In 2005, the European Commission in the context of an ageing society, launched an open debate on how to tackle the issues of better work-life balance for women and men in ways which would also “boost birth rates by promoting incentives and removing obstacles to private choices” (Equality between women and men in the European Union, 2005).

In the Green Paper “Confronting Demographic Change: A New Solidarity Between The Generations” it is claimed that if Europe is to reverse its demographic decline, families must be supported by public policies that allow women and men to reconcile family life and work. The demographic decline may finally spur the EU to come up with much needed Directives that will ensure that women and men can indeed cope with their dual roles as carers and workers. The secure provision of quality, affordable and accessible childcare after the maternity leave period may be one of such Directives instead of merely calling on

governments to do so as happened in the Barcelona Summit in 2002. But are Directives effective in influencing workplace cultures in ways which would permit a closer fit between one's personal circumstances and remunerated work? And does the availability of work life balance policies mean that problems are resolved on the work life front?

Whilst acknowledging the impact that such legislation may have on permitting more women and men to integrate their personal life with work, this paper shall argue that change needs to be happening at the personal, family, organisational and social level before women, like men can truly reconcile equally and fairly, their work with life and other family commitments.

Thus in this paper I shall argue that traditional gender values have a strong impact on the decisions that are taken regarding work and private life. Likewise organisations also operate around gendered beliefs and practices which glorify workers who can work as though they have no life interests or responsibilities outside work (Rapoport *et al.* 2002). These values and assumptions create difficulties especially for women who cannot fit into the template of the 'ideal worker' who is normally a man. However, organisations which offer family friendly policies find that men are often reluctant to make use of them because of gendered decisions. Finally I shall argue that in the absence of demand for gender equity on the home front especially by women, it may be more difficult to achieve it on the organisational side as long as organisations continue to find women and men who are able to work as though they have no life or family commitments outside it.

How Gender Matters at Work and at Home

In different societies certain behaviours are recognised as being more suitable for women and others as being more suitable for men. Social roles are only partially determined by biology and the appropriate behaviours for women and men are closely linked to socially constructed concepts which tend to differ over time and place (Hofstede 1994). This interpersonal enactment of culturally specified roles is termed gender.

Gender thrives on faulty generalisations and assumptions which in turn lead to stereotyping. This rigid formulation of roles which determine what is acceptable for women and men represents what people think or believe. Values are often built around these suppositions which ultimately affect the choices we make at home and at work.

It is not unusual in families for one to think that certain tasks will be done by someone else. Who for example is expected to care for the children when they are young? And stay with them when they are sick? And prepare the family food? And scrub the bath and clean the bathrooms? And who is expected to be the primary provider? And repair the flat tyre and get the barbeque going? If we had to ask people around, the answers would be predictable but not unanimous.

Individuals rarely stop and question why they take up certain roles and tend to avoid others. Many perform certain roles not because they are forced to do so but because it seems like the right, or only reasonable, thing for them to do (Fletcher 2001, p.16). Thus when it comes to making decisions in our everyday life we often fall into the trap of unexplored choices.

Assumptions about gender roles impose limiting effects and often shackle our freedom to act differently from the way we are supposed to act as women and men in a discourse of femininity and masculinity.

In many industrialized societies, men are socialized into believing and thinking that a career and family actually go together and that having children is likely to increase their motivation for them to work and earn a living for the family. Women on the other hand, possibly due to their biological capabilities of procreation but largely due to social expectations, are generally assumed to take on the major responsibility for care and nurturing, particularly of children, and are more likely to restructure work around family needs than are their partners.

Friedman and Greenhaus (2001, p.43) argue that women incur a “family penalty” in their careers because they shoulder most of the home and family responsibilities, while men on the other hand, gain a “bonus” from having a family. Thus the wife’s over-involvement in the home often enables her husband/partner to pursue a career successfully without the family distractions.

While research is showing that in many countries men are taking on more responsibilities for the care of their children, women are still doing twice or three times the amount of housework as men and thus equality on the home front remains elusive for many (Friedman and Greenhaus 2001). A survey carried out in Malta in 2004 found a similar pattern, that is that married males spend an average of 2.1 hours on housework and family care during weekdays, compared to 6.3 hours for married women. Usually men devote more time to gainful work or study than to domestic work. On the other hand, the average time spent on domestic work by females is more than the time men spend on gainful work or study (National Statistics Office (NSO) 136/2004). However, one must note that equality also remains elusive at work. Whilst women are increasing their economic activity, even if this is not always in standard or typical work, the volume of paid work undertaken by employed fathers remains two thirds higher than the volume undertaken by employed mothers (O’Brien and Shemilt 2003). This pattern is most evident in Malta where only 32.6% of women are in the labour market (NSO, 083/2006). Smith (2003, p.15) claims that the high expectations of families in an extended family or Mediterranean model which Malta falls into, “will severely restrict the labour supply of women and will also influence the type of jobs that breadwinners can take since they will be unable to take a job that pays anything but a family wage”.

The ideology of the separate spheres, which encourages the withdrawal of fathers from the home and which places a disproportionate amount of family responsibility on mothers, is still persistent today in many countries. The presence of women in the labour market varies greatly from country to country and while in the Nordic countries like Sweden, Denmark, Norway and Iceland over 70% of women are in employment (Eurostat 2004) this goes down drastically in a country like Malta (NSO, 083/2006).

However, despite the ever increasing presence of women in the labour market, most post-modern families still retain the mother-caregiver, father-breadwinner structure (Williams 2001). This is because gender stereotypes are particularly resistant to change especially

when they benefit those who have the economic and cultural power to defend them (Badgett, Lee and Folbre 2001). However since gender roles are socially constructed they can change over time and place.

Gender roles do not operate in a vacuum and the working patterns of women and men are also affected by what is happening around us. The shifts in the local and global economy, the educational level of women and men, the role of religion, the changing patterns of the family, taxation and social welfare regimes can impact on the decisions we take as women and men at home and at work.

The diversification of gender roles requires a re-evaluation of societal values for both women and men, and while gender roles are constantly evolving and changing, the traditional ideology that surrounds them is still strong (Lewis and Cooper 1999).

Work and Family in the Context of Change

Families are changing, women are changing and so are men, albeit at a much slower pace. The labour market is constantly shifting and work is becoming more precarious through the push for reducing expenses and increasing productivity.

Given the unstable situation in the labour market, men can no longer count on their careers as a clear and continuous path to financial success and given the increasing rates of divorce and single parent households, women can no longer count on their partners as their financial providers. Likewise, with the increased presence of women in labour market, men can no longer pretend that their partner will take the burden of the non-remunerated work at home upon herself alone.

According to *European Industrial Relations Observatory* (2004), the average agreed weekly working hours across Europe in the early years of the 21st Century have continued to creep downwards, albeit slowly in recent years. However one must be careful on how to interpret this data since people may actually work longer than their agreed hours. What impact will this have on the workers? Will this mean more time for life or will it simply mean that the same amount of work has to be done in a shorter period of time? And what impact will this have on the women and men who may be expected to do so in a climate of continuous change and economic slow-down?

In the face of Europe's crisis over the sustainability of pensions, a longer working life and having more babies is the suggestion being put forward by *The Economist* (September 2003, p.13) as a way of solving Europe's pension problems. However as the leader article implies this will not be possible unless the obstacles that women face to having children and pursuing a career simultaneously, are removed. The article suggests changes to employment law and the tax system in order to permit women to have a career and children at the same time. Whilst changes to legislation and the taxation system are necessary, these essentially do not challenge the prevailing culture at home and more essentially at work.

Work continues to remain inflexible for workers who have caring responsibilities or those who show that they have other interests in life outside work. For more sustainable families,

communities and organisations, Lewis and Cooper (1999) propose more fundamental changes to the workplace where humanity becomes more visible and where workers can all be responsible providers and responsible carers of themselves and those around them. But this may be easier said than done and can encounter many difficulties in the process.

What Makes it difficult to Integrate Paid Work and Family in Gender Equitable Ways?

It is calculated that the average person spends 100,204 hours working. This means that we spend more time on work than we spend with our family and friends, hobbies or interests (Citrin and Smith 2004). However, both work and family require time and emotional involvement. For many years the focus of much research was on how these two demanding roles caused conflict and stress. This conflict was often resolved traditionally by having women in charge of the maintenance of interpersonal relationships and men taking on the main responsibility of earning a living that would support the family financially.

However the unstable labour market conditions in several countries and the decline in the value of wages are gradually contributing to the decline of the sole male bread-winner arrangement and are giving rise to alternative arrangements for the combination of employment with caring responsibilities (Crompton, 1999).

Today, in order to be able to combine work with family, couples may have to delay or limit their childbearing, turn down jobs that require long hours or a lot of travelling and/or reduce their commitment to work or family, depending on their priorities. Hammer and Thompson (2003) claim that employees who have responsibilities for caring for young children or/and elders and employees with large families, face more difficulties than other workers.

Rubery, Smith and Fagan (1999) claim that high levels of unemployment, the relocation of activities, the restructuring towards services, technological change, the widening of earning dispersion, decentralisation of collective bargaining, the abandonment of wage indexation, the increase in flexible and unsocial working hours, pressure to reduce public expenditure and public sector deficits, all have implications on gender equality.

While the economy and market conditions are constantly changing, the expectations emanating from traditional gender roles are not evolving at the same pace. It is true that more and more women are joining the labour market; however this move has not been matched by men taking on a bigger share of the non-remunerated work done at home (Hoschild 1997). With the extra baggage of familial duties squarely placed on women's shoulders, they are often constrained to take up lower positions which do not conflict with their care-giving roles, to work part-time or to quit completely from work while the children are young or else to remain childless.

Friedman and Greenhaus (2000, p.151) claim that Working mothers "are the most vulnerable to suffering career penalties and work-family stress". In her book "*The Price of Motherhood*" (2001) Anne Crittenden, warns that many bosses privately believe that mothers who work part-time have a recreational attitude towards work. She also claims that survey after survey showed that in profession after profession, when a person asked for a

flexible schedule in order to accommodate child-rearing it immediately put their career progression at risk.

These attitudes clearly imply how organisations are still prevalently structured around traditional norms and concepts which are not free from gender biases and which often guarantee that many women will have to cut back on, if not quit, their employment once they have children. So while women may voluntarily or involuntarily over-involve themselves in the family, men are also voluntarily or involuntarily over-involved in their remunerated work. Over-involvement at work by men often implies that they are unable or unwilling to take on a bigger share of the family responsibilities. Over-involvement or intensive involvement in the family by women means a lower income for the family and limited career choices and aspirations.

Hakim (1996) claims that the vast majority of women deliberately choose to give their first priority to domestic responsibilities, unlike the 'committed workers' who give priority to employment careers. Crompton and Harris (1999) while critical of Hakim's theory of women's deliberate choices, claim that both constraints and choice play their part and that women's intentions and actions vary according to the circumstances they find themselves in at different times of their lives. Possibly men's choices too are a mix of constraints and selection, which vary according to the circumstances they find themselves in.

A study by Laura Edwards and Nick Burkett (2001) on the expectations and aspirations of people in low and middle paid jobs in the UK found that, while men can see the value of spending more time with their families and less time at work, few actually want to do it themselves or believe it is personally feasible for them. On a practical level they are more likely to feel that it would not work and are more reluctant than women to make a trade-off for more time, since this implies they will get less pay. They claim that, "For many of the men, the link between work and family is articulated in terms of more work equals more money to support your family". It is interesting to note that the study also found that those on low wages are unlikely to afford to sacrifice salary in order to spend more time with their family. A similar study on "*Working Fathers - Earning and Caring*" by Margaret O'Brien and Ian Shemilt (2003, p. xii) confirm that the "cash vs. care negotiation in contemporary households cannot be separated from the current national gender differentials in income."

As we have seen, individuals and couples are still making a lot of gendered choices. One can argue that gendered choices imply a trade-off with negative connotations which women often have to face since responsibilities for caring and home-making still fall disproportionately on their shoulders. Others claim that it is women who decide what they want. But do men have a real choice if the responsibility for financial matters still falls disproportionately on them? Or are trade-offs between family and work inevitable for both women and men? Are trade-offs sacrifices we should avoid at all costs? Or should we move beyond trade-offs to view them as opportunities to make conscious and wise decisions as our lives evolve and change? Surely choosing amongst life priorities and declaring that we care for our family and our work is not a trade-off but a wise choice. We must acknowledge that as women and men we have responsibilities to care and responsibilities for work. This implies a re-negotiation of roles between women and men and the re-designing of the way we work (Lewis and Lewis 1996).

Gender and Organisations

Research is showing that in spite of changes in the gender contract, women and men are still strongly influenced by invisible pressure to act appropriately according to their gender. These pressures and expectations are not shed at the doorway of private homes. Gendered roles and gendered values are carried with us to the work place. Thus the socially constructed manifestation of beliefs and values is often unknowingly transferred via individuals to the organisations.

The link between gender and organisation has been under the lens of researchers like Kanter (1977) and Acker (1990) whose work affirmed that organisations are not gender free or gender neutral. It may be easier for researchers to realise this than it may be for the workers themselves who find themselves immersed in the culture of an organisation on which they are dependent for their living and which they may be reluctant to challenge. Since the organisation is the provider in terms of remuneration, it may be seen as the omnipotent structure with given rules and regulations for the common good of all. Fitting into the structures of the organisation may seem to be the only reasonable thing for workers to do (Mills 1992). Thus inequalities arising from gendered beliefs on the personal level become institutionalized within the organisation through collective gendered processes that seem rational and natural (Acker 1992).

Thus values of the larger society regarding the role of women and men become the values of the organisations. In the larger society it is man who is automatically equated with the world of work. This results in the devaluation of feminine qualities like relational and collaborative skills and the appreciation of everything related to conventional masculine ideals like aggressiveness, critical thinking and the ability to put aside personal and emotional consideration in the interest of productivity (Kanter 1977). These ideals are created and sustained through the separation of the spheres which can have negative impacts not only on women, but also on men since they are restricted from being more participant in the family sphere (Acker 1990, 1992; Kanter 1977; La Rossa 1988).

Acker (1990) claims that in the pursuit of achieving organisational goals in the interest of production and profitability, organisations have to control their human resources. This can only be achieved through the elimination of emotionality and sexuality which ultimately lead to the creation of the ideal worker, that is a person who is willing to put work ahead of all other considerations and be able to shelve distractions like childcare and house work which detract from the responsibilities that the job imposes (Acker 1990, 1992; Rapoport *et al.* 2002). Since the industrial revolution it has been evidently clear that it was the bread winner, normally a man, who was able to fit in this template of the ideal worker. Thus since men had to dedicate themselves to paid employment, women became automatically associated with the family world and domesticity. While today one must acknowledge that women are increasing their presence in the labour market, one should not automatically assume that the “gendered substructure” which values masculinity has been sufficiently challenged.

Traditional masculine qualities are not only expected by the organisation, but they are often used to measure workers and their success at work. Thus gendered values will determine

such things as to who will be promoted, who will be given more training and who will ultimately get a higher wage. Since women are still largely encumbered with the family and home responsibilities and cannot fit it into the ideal worker template, they are often put on a slow, compromise-riddled mommy track with grave opportunity costs for their earnings (Crittenden 2001).

This means that feminine attributes like care giving, nurturing, emotionality and visible commitments or interests outside those of the organisation are often rejected outright by men who have to prove that they are competent workers. Thus the ideal worker is an unattached, unemotional, childless being that is accommodating and is exploitable by the organisation in the name of profit (Burrell 1992). Thus the worker who does whatever it takes and works as though time is no obstacle and as though the family has no needs, is glorified, appreciated and often rewarded and encouraged to work as such (Rapoport *et al.* 2002). Thus time spent at work (presenteeism) and not necessarily output becomes a visible measure of commitment that is often used to evaluate a worker's worth.

In the absence of humanity and rejection of sexuality, Acker remarks that organisations whose main aim is economic success and capitalist gain take no responsibility for human reproduction and the survival of the human race (Acker 1998). Reproductive capacities and reproduction come into direct conflict with the aim of organisations for profit since this may disrupt the "orderly and rational pursuit of organisational goals" related to efficiency and productivity (Acker 1992, p.254). This leads to a dominant discourse that values work over life.

Thus we can conclude that organisations are gendered sites that stem from the dichotomy between the world of work and the world of the family and where masculine traits are systematically valued and by contrast feminine traits are devalued. Gendered beliefs are socially constructed, and since gendered values can impact negatively on both women and men, they can be de-constructed to give way to more sustainable organisations that acknowledge that workers have a life both at work and outside. This is by no means a simple task because it entails exploring, examining and ultimately challenging history, culture, values and practices that form the unquestioned, reasonable way to work in organisations (Rapoport *et al.* 2002; Rao, Stuart and Kelleher 1999).

The Introduction of Family Friendly Policies - Are They Enough?

Companies are first and foremost interested in productivity, results and success and the work culture in many organisations glorifies people who are free to dedicate their time and energy for the benefit of the organisation. As a result, women and men who take their caring and family responsibilities seriously and show it visibly at the place of work, are not regarded favourably within organisations (Gini 2000).

Thus when talking about family friendly policies one has to see how these are perceived by both the employers/managers in charge as well as by the workers themselves as women and men in different life situations with different needs, with different value systems and with different incomes. Family friendly policies include the option of reducing one's hours, working part-time or through annualised hours, career breaks, extended maternity and

paternity leave, paid dependency leave, compressed week, job sharing, working from home, tele-working and child care related services amongst others.

Acker (1998) claims that the “Measures to accommodate individual family and domestic needs can disrupt the orderly flow of the organisation activities, rhythms and processes, thus possibly causing difficulties for managers, supervisors, and co-workers. Most managers still believe that every time an employee’s personal interests win, the organisation pays the price for that personal win (Friedman, Christensen and Degroot 2000). This philosophy may stem from practical problems which may arise for employers/managers who have to deliver workloads with reduced or differently organised resources. Workers too can feel under pressure when co-workers opt to work differently but are still expected to deliver according to targets.

Since workers are dependent on the organisation for their income and know that their performance will be judged by their action, they cannot afford to ignore the way the employer/manager will look at them if they decide to go against the flow of inter-organisational practices followed there. One must also consider whether the employer is the government or a private organisation, since the conditions of work and related perceptions may vary.

An organisation whether public or private, may indeed have family friendly policies in place, but that does not automatically mean that they are truly available to all and that people actually move away from conventional working patterns. In their research in six organisations known to be proactively engaged in implementing work-life balance in the UK, Kodz, Harper and Dench (2002) found out that while the perceived demand appeared to be high, take-up had been relatively low due to a number of reasons. In general, they found wide gaps between the work-life balance principle and its implementation and take-up. They found that the dominant culture was that of working long and hard and of an expectation of constant availability. This led participants to believe that they had to choose between having a successful career and opting to have a more balanced life. It was an “either-or” situation and they felt they could not have both in such a climate.

The main concern of the workers in this research was the perceived impact that the take-up of such family friendly measures would have on their career prospects. This conflict often resulted because in reality the organisation had a long-hours culture and unsupportive attitudes from superiors and colleagues to those who could not work as such. They also found that workers often lacked knowledge of what was available and feasible and this was complicated by the fact that the employer often relied on the creativity of the individual to identify solutions for themselves. Other reasons which led to a gap between availability and take-up was the heavy workloads that made it difficult for individuals to find an alternative way of working and the lack of infrastructure and technology to support the take-up of initiatives like working from home. Last but not least was the concern that flexible working practices would result in a reduction in pay which the low-paid employees could not afford (Kodz, Harper and Dench 2002).

Research also shows that the take-up of family friendly measures is often mostly associated with women because of gender stereotyping and the prevailing outmoded gendered culture

within the same organisations. (Edwards and Burkitt 2001). This may be manifested in the form of jokes or unwanted comments or conversations about men who may choose to ‘transgress’ from traditional gendered expectation (Haas, Allard and Hwang 2002).

A study conducted in Malta on “*The Impact of Parental Leave, Career Break and Responsibility Leave in the Maltese Public Service*” (2003) found that 98.4% of the take-up of parental leave and career breaks was by women and just 1.6% was by men. Therefore as long as such measures as parental leave and career breaks continue to be taken mostly by women, they will continue to be seen as the deviant and men as acting within the norm of gendered organisations. Ultimately if the take-up of such measures continues to be interpreted as being ‘deviant’, this will not promote equality in the long run but will continue to put women on the slow track and men on the fast (Lewis and Lewis 1996). It is also worth noting that if presented as ‘family friendly’ such policies may imply that workers without children will not feel they have the right to avail themselves of such options.

In front of such challenges indeed work life balance may be surrounded by more rhetoric than real life possibilities. Both the fast and the slow tracks are problematic. The fast track will mean that men will continue to be tied to work in order to fit into the ideal worker template, and women will continue to be penalised with lower pay and fewer chances of promotion if they opt for the ‘mommy’ track. A more equitable, sustainable and middle of the road approach is possible wherein both women and men do not shy away from showing that they have family responsibilities or interests outside work. This will not happen by offering more family friendly policies, which simply address the symptoms of conflicting interest between the individual and that of the organisation (Rapoport *et al.* 2002). Unless both can find a way out which satisfies both the organisations and the individuals through win-win solutions, equitable and sustainable changes at the workplace are likely to remain elusive.

From Policy to Systemic Changes for More Efficient and More Equitable Organisations

Acker (1998, p.196) suggests that we start looking at organisations, not as “relatively stable, rational, bounded structures” but a process which amongst other things, shapes families to its demands and needs (i.e. of the organisation). The demands and needs of the organisation are reflected through its work practices which are often considered to be the most efficient way of doing business. And in the minds of those organising work, only workers who can fit into the ideal worker template can work selflessly in order to generate wealth for the organisation that ultimately provides the income for the worker. Williams (2000) claims that to succeed in organisations you require this ideal status but that few women can fit into this template.

But what is generally considered to be the best way of doing business by the managers and bosses that run the same organisations? Does it mean doing whatever it takes as if time is no obstacle? That may mean working late or taking work home on a regular basis. But is that sustainable in the long run? Research shows that working long hours comes with a cost not just for the workers and their family, but also to the organisation in the form of more stress-related mistakes, absenteeism and reduced productivity. Stress can also lead to burnout and

thus result in higher staff turnovers (Levinson 1996). This too has a cost to it but perhaps as long as the ideal worker is easily replaceable, organisations will continue to extract what they can during the worker's prime time in the name of results, success and profitability.

If being the ideal worker entails working like someone who is not encumbered with the responsibilities of small children or older relatives or friends, what could it lead to? That may mean not having enough time to build meaningful relationships with one's children, or not being able to care for sick parents or relatives or not having enough time for hobbies or for involving oneself in community work. That may mean castigating people for the simple reason that they show they care for their very own children, or their parents or friends. Are these the values that organisations want to nurture? And are caring and sharing of family responsibilities and having a life outside work dirty words to mention in money-making environments? Is this really the most efficient way of doing business? Or does trying to fit into the ideal worker template create stress for women and men who want to be caring and who want to act as responsible beings both inside and outside work? And are family friendly policies sufficient to challenge the entrenched mentality in gendered organisation about the ideal worker and the most efficient ways of doing business? Or will policies on their own confirm the status quo in organisations that are not free from gender biases?

Talk about gendered beliefs and gendered organisations can remain on a theoretical level and remain an abstract concept which goes largely unnoticed by staff. Talk about gender equity and more flexible working solutions can easily be dismissed by managers and employers alike. Finally in the face of ever-increasing work loads and diminishing staff to carry out the work, can workers really afford to work differently especially if this means that they lose out on their pay and their career prospects?

If the concept of gendered organisation is to move beyond theoretical abstractions, something more fundamental and practical needs to be done in order to enable workers to move away from the idea that life and work are conflicting. But how do you do this in practice? Can change be brought about through compromise and appeasement? Are not family friendly policies a form of settlement for those who want to balance work with family? But if this balance implies that managers remain suspicious of the dedication of workers who choose to do so, how can things change unless the manager understands the needs of the worker and the worker understands the needs of the organisation?

The social case or moral responsibility case for change is unlikely to matter to employers whose main concern is profitability here and now! Joan Acker (1998, p.198) describes the "ineluctable antagonism between the organizing practices of our societies and the carrying out of life-producing activities in the everyday spaces outside of organisations". But as long as men continue to meet the work demands of the organisation and women continue to alter their working lives in order to carry out their life-producing activities by resorting to family friendly policies, organisations are unlikely to bother to change their culture. It is only when men start refusing to meet the work demands of the organisation that organisations may have to change (Acker 1990).

An employer is unlikely to be in favour of changes or policies that are a threat to the production or the delivery of service, especially at times of rife competition when

organisations are trying to find ways of becoming leaner and meaner to be able to reduce costs and increase profitability. If family friendly policies will increase the costs then organisations may choose not to employ those most likely to use them (O'Brien and Shemlit 2003).

A study done by Rizzo (2004) in Malta on "*Work-Life Balance with Focus on Family Life*" found that the majority of managers claimed that changing the working time arrangements like reducing the hours, or introducing flexitime to suit the needs of employees would create problems for the firm. Amongst the problems mentioned were the extra costs involved, size (due to having few employees), disruptions and the complexity it may bring to the coordination task of management. Only three out of the thirty-five firms responding to the questionnaire stated that such an adjustment would have no adverse effect on the firm. Therefore first and foremost any policy or change must come accompanied with a strong business case for it to succeed.

Scheibl (1999) claims that research attempting to highlight the benefits of work life policies to organisations, often lacks rigorous forms of measurement techniques or the use of control groups. Through her review of twenty-one different work-life programmes in different organisations, she concluded that there is evidence that the action research approach is the leading path toward a more inter-disciplinary understanding of the links between business and family issues. Self-evaluation studies within organisations which are based on anecdotal evidence and which take a congratulatory tone about the success of work life policies and which downplay any negative effects or problems are not sufficient. Instead studies of the positive effects of work/life measures on organisations and workers should be comparative and based on sound research while the dissemination of such research findings should be easily communicated and not 'buried in academic journals' where they are likely to remain hidden from the business community (Friedman 1991, p.58).

Zeitlin (1999) highlights the need for the development of innovative solutions and institutions to replace the rigid and increasingly outdated work structures. She claims that such organisations may be able to utilise the energy from viewing people more holistically and not merely as workers in a command and control style setting. In her work "Gender and Institutional Change Project - Report and Recommendations", Zeitlin (1999) advocates a paradigm shift from the current conflicting and separate approach to a rapport between work and life that relinks the needs of workers and those of the organisations. She calls this the Dual Agenda.

Rapoport *et al.* (2002) like Zeitlin (1999) suggest an integrative Dual Agenda approach which does not separate or prioritise work over life or vice versa. Through this approach the needs of the organisation and the workers are given due consideration with the aim of eliminating inequitable and ineffective work practices based on outmoded gendered assumptions, that do not do the workers or the organisations much good. These include gendered assumptions regarding the 'Ideal Worker' who is always available and works as if time is no obstacle and assumptions regarding gendered stereotyped roles that go beyond the organisation. They propose a synergistic approach which moves away from individual favours, or accommodating family friendly policies which simply address the symptoms without eradicating the cause. The search for the eradication of gendered assumptions

should be complemented with a search for flexible, innovative and creative work practices that make business and life sense.

Changing the Gendered Nature of Corporate Culture

It is understandable that changing the corporate culture roots is likely to be met with opposition especially when one challenges basic assumptions that have rooted in the corporate culture (Roosevelt 2002). The challenges to take on this approach are not small and research in focus groups across Canada done by the Centre for Families, Work and Well-Being concludes that the challenges imply: a) assessing what is reasonable in order to balance the benefits of the individual with the responsibilities of the group, b) the need to communicate well the needs of individuals and the organisation, c) finding solutions which will satisfy the client's needs while still giving flexibility to employees, d) finding fair solutions that will not discriminate between the workers including childless workers and single workers e) changing the mentality of some managers who do not understand the importance of flexibility, d) creating trust and treating workers as adults while ensuring there is no abuse in the process.

Research carried out by *The Wharton Work/Life Roundtable* (1999) in order to discover new and practical knowledge as to how employees, managers and their organisations can bring about change towards successful work/life integration, highlighted, amongst others things, the importance of senior business leaders for bringing about change. They claim that for successful work/life cultures, CEOs or managers must be champions for change, be willing to take risks, set the culture tone and exhibit role model behaviour or at least understand the dilemmas of work/life integration. Equally important is the need to generate business-relevant data to create the need for change and implement it on a trial basis while continuously learning and adjusting things according to the feedback received. The research also suggests the creation of a team of change agents to create dialogue that challenges basic assumptions about how work is done, in order to change the culture over time and to sign up strong internal champions and then employ credible messengers to spread the word.

Lynda Gratton (2004) claims that organisations can achieve commercial success and still be places where workers can find fulfilment. This can happen if individuals are able to participate in determining the conditions of their associations but not at the expense of others. She proposes the creation of democratic organisations where the relationship is adult to adult and where individuals, as investors, have obligations both to themselves and to their organisations.

Leslie A. Perlow in her work "*Finding Time - How Corporations, Individuals, and Families Can Benefit from New Work Practice*" explains how she challenged a basic underlying organisational assumption that longer hours equate with increased productivity. In her book she narrates the individual heroic efforts of engineers working in a high pressure environment who assume that for their own success and that of the organisation they have to put in extended hours. Through a system of rewards for these efforts the organisation maintained the status quo which meant perpetuation of a crisis mentality with continuous interruptions which damaged the productivity and impacted negatively on the worker's lives outside work. Perlow's work does not resort to the normal family friendly solutions but

offers innovative solutions based on the findings and her observations in collaboration with the team there.

Innovative working solutions are not always easy to find and Totterdill (2002) claims that we should be critical of the perception that change is rational and incremental as found within management textbooks. He claims because change is a “dynamic and uncertain process which emerges through the interplay of many factors”. He adds that successful organisational innovation should be more of a “gradual, reflective process which engages employees throughout the organisation” within a culture that permits “exploration, negotiation, experimentation, critical appraisal and redesign over many cycles” and with possible setbacks along the way. Innovation and change are more likely to occur in learning organisations that are good at networking and are close to all stakeholders and where knowledge from a wide variety of sources is accumulated, distributed and used effectively. He recommends that particular attention should be paid to action-research projects in order to generate a better understanding of sustainable change and to develop new change methods (Totterdill 2002, p.15 -19).

Rapoport *et al.* (2002, p.72) do not stop at theorising about change but actually suggest a practical step by step process to bring about organisational change which they call Collaborative Interactive Action Research. Through this change process participants will be able to “uncover gendered assumptions, such as those about competence and commitment that underlie work practices that are both inequitable and ineffective”. Once they become visible these assumptions can be challenged and action plans are put into place in order to replace them with more equitable and effective work practices for the benefit of all in a win-win approach.

Holistic Change that Permits Work Life Integration

Change is not easy and personal, organisational, social, religious and economic barriers may impede transformation and innovation. All these barriers must be given particular attention and unless one is conscious of the dynamics of change on the different levels, the exercise will not be complete. Change towards more equitable organisations will be easier to achieve when equity is practised everywhere and becomes a way of life embedded in everyday routines at home, at work and in the society in which we live.

Corporate cultures are built over time by human beings who have their own agendas and interests to defend. Workers will continue to be conditioned by the values of those who assess them and guide them and manage them at work. In turn, those in management and subordinate positions will continue to be influenced by what happens around them, in their families, within the organisation itself, in the society they live and by what happens in the world at large. Tropenaars and Prud’Homme (2004, p. 279) claim that “changing corporate culture is a contradiction in terms” and that this is only possible if organisations are “in flux”, that is they are already and continuously in a change process, and are willing to acknowledge that “stability goes hand in hand with tension and potential conflict between opposing value orientations. But this takes courage and determination and not everyone is ready to embark on a mysterious journey of organisational change when the stability of the status quo reassures and offers stability.

Changing the traditional work place is about the “de-masculinisation of work”. However, the de-masculinisation of work is unlikely to happen unless there is a similar counter change process happening on the home front for the “de-feminisation of the home” (Rapoport *et al.* 2002). Are women being demanding enough for change to happen on the home front? Or are they still succumbing to second shifts (Hochschild 1977) making all the accommodations like working part-time or on reduced hours, or as in the case of Malta, leaving the labour market completely for the family, without demanding similar sacrifices from their partners? Are men ready to embrace their share of responsibility or are they better served with the traditional work arrangement wherein they are glorified and rewarded for being absent from the family? And are women ready to share the privilege and responsibility of raising their children and to share in the financial responsibilities with men?

In her doctoral thesis and publication called “*Graduate Women and The Male Breadwinner Model*” based on the experience of 39 Maltese women graduates, Camilleri (2005) found that the “majority were quietly submissive and accepted their fate - giving up their career to care for the family and resigned to men’s minimal involvement in care work”. Camilleri’s work highlighted the fact that Maltese women accept oppression with quiet resignation and this does not come as a surprise in a country where “The Church was constantly speaking of women’s role as wives and mothers and the importance of women staying at home to care” without parallel calls to increase men’s participation and responsibilities in the family.

The advocates for the de-feminisation of the home and the de-masculinisation of work are likely to be enlightened women and men who want to participate actively in both work and family and who do not think that paid work or bringing up children is the responsibility of one or the other gender. Are there enough enlightened men and women in Malta in 2006 willing to challenge the seemingly insurmountable divide between traditional gender roles and expectations that are socially constructed and which are personally, politically, culturally and religiously sustained? There may be some, but the prevailing situation in Malta shows that there are still very few women and men “in gender role flux” who are ready and willing to do away with the traditional gender contract which limits and restrains women and men into the separate spheres. In the absence of a demand for equity on the home front can we expect organisations to change and to supply it from the work side?

In order to challenge the gendered nature of organisations, parallel changes may need to be happening on a personal, domestic, political, social and possibly even on a religious level (as in the case of Malta). All these are all interlinked and affect each other and thus organisational change will be more effective if analogous changes are happening on the other levels too. But how do you go about changing the mind sets and the value systems of those who continue to affect our lives in many ways? This may seem like a mammoth task and may require time and effort on many fronts.

Does this mean that things are doomed to stay as they are especially in a traditional country like Malta? Or will things change gradually without revolutions and upheavals? I believe that the economic realities and necessities will make it more and more difficult for the average family to live on the male breadwinner wage. This will mean that remunerated work will gradually become an integral part of women’s lives. In spite of this, I cannot foresee

women becoming less caring towards their family and their responsibilities. In this economic change process, there will be the need for men to become heavily involved and to carry some of the load of the non-remunerated work. When both women and men can share and experience the joys and burdens of family, work and life, we may not have to challenge traditional assumptions which are at the heart of gendered organisations, since change would have occurred gradually from within and on seeing the benefits of a life that integrates and incorporates both. This is a reality which some are already experiencing and the number of dual carers and dual earner families is set to grow.

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RECONCILIATION OF WORK AND FAMILY

CHARMAINE GRECH

Introduction

Equality between the sexes is a matter of fundamental human rights. In fact, the second half of the twentieth century saw the development and ratification of a range of international conventions concerning women's position in the labour market by supranational organizations. One such instrument is the United Nations Convention on the Elimination of all Forms of Discrimination Against Women which promotes women's economic rights and independence. This includes access to employment, appropriate working conditions and control over economic resources. Another objective of this Convention is the elimination of occupational segregation as well as of all forms of employment discrimination. The harmonization of work and family responsibilities for women and men is another objective of the Convention. Malta ratified this Convention in 1991.

Malta is also a member of the International Labour Organisation and thus it is covered by the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up in 1998. Therefore, along with other countries, Malta is obliged to respect, promote and realize a number of fundamental principles and rights, one of which is the elimination of discrimination in respect of employment and occupation. Malta is also a signatory to various ILO Conventions and Recommendations. In 1998, Malta ratified The Equal Remuneration Convention 1951,¹ and in 1968 it ratified The Discrimination (Employment and Occupation) Convention 1958,². Therefore, Malta, as a signatory to these instruments, was obliged to bring its national law and practices into line with the provisions of these Conventions.

The European Union has a long-standing commitment to gender equality which has been enshrined in the Treaty since 1957. Equal treatment legislation is an integral part of Community legislation, and Malta, as a prospective Member State was bound to incorporate this legislation into its national law by the time it entered the Union on the 1st of May 2004.

¹ Convention No. 100, which establishes the principle of equal pay for work of equal value.

² Convention No. 111, which addresses equality of treatment and opportunity including access to employment and conditions of work.

Thus, the year 2003 saw the enactment of several laws, which transposed the European Union Directives.

Despite this long commitment to equality, in Malta we are still faced with low female participation in the labour market and a society which still puts most of the burden of family responsibilities on the woman. How can this problem be addressed? In this paper I will examine three main concepts - what do we understand by the concept of family and how is this affecting the labour market and vice versa; how possible is the reconciliation of work and family life; and what is the effect of labour policies on female employment and vice versa?

What is the Family?

The first question which one raises when faced with the concept of how employment affects family life is what is the definition of family. If we had to look at the definitions offered by the Oxford Dictionary we realize that this is far from the traditional concept which springs to mind i.e. man, wife and 2.4 children. The Oxford Dictionary defines family as:

- a. set of relations, living together or not.
- 2a. the members of a household.
- 2b. a person's children.

In this definition no mention is made of man and wife and thus the concept of family is considerably widened.

Therborn in 2004 pointed out that there is an ongoing process in the history of family forms; that what some might perceive as a weakening of the family may be just a phase of reconsidering what should be included in the family. It is thus a matter of the question: is the glass half empty or half full? Are cohabiting and homosexual couples who ask for legal recognition of their union weakening or institutionalizing their families? As an example of the changing trends in society, according to the Light Update Report on the National Action Plan against Poverty and Social Exclusion, the proportion of births outside marriage has increased at a considerable rate from 2.2 % of all births in 1992 to 14.9% in 2002.

In 'Belief', the policy document of General Workers' Union which was published in 2001, it is stated that society is made up of families which are small societies in themselves. The family is a basic value for society and thus it merits recognition and appreciation and these are given when society understands every family. The General Workers' Union understands and recognizes the single parent family as family and stresses the needs of these families, especially when trying to enter or remain in the labour market.

When faced with the increasing number of separation cases and of single parents, the issue of female employment is one which immediately springs to mind. The 'life insurance' which most women procured upon marriage is no longer such a foolproof system and thus one needs to address the issue of female employment if we are going to work towards eradicating poverty and social exclusion.

The Reconciliation of Work and Family Life

Family responsibilities are the main reason why women tend to stay outside or exit the labour market or choose non-standard jobs and discontinue their career. The total fertility rate for Maltese couples stood at 1.37 in 2004 as compared with 1.95 in 1997 and this rate is well below the rate of 2.1 which is considered to be the replacement level for developed countries.³ One wonders whether employment policies do affect the fertility rate. Is Malta's low fertility rate related to the conditions of the Maltese labour market? Countries which have a high rate of women in the labour market, such as Sweden, have also a high fertility rate which compared with the countries which have low female employment and low fertility rates, makes me arrive to the conclusion that employment and fertility rate are linked together, in the sense that if one is high the other one is high too.

The debate on the issue of female employment mostly revolves around childcare. Should you or shouldn't you? Unfortunately there are conflicting studies on the matter. Some studies show that using childcare services is not beneficial for children, whilst other studies conclude that children who were never sent to playschools before school age tend to have fewer developed skills than those who have. The situation at present does not really encourage parents to make use of childcare facilities. Although measures have been taken by government to control the quality of childcare facilities, these are still not accessible to a large number of the population. This is for a number of reasons, the major one being financial. When availing oneself of childcare facilities means spending half one's salary on such, one does tend to think twice about continuing to work.

Women in employment and childcare facilities are two factors which tend to go together. The reality is that these are not synonymous with each other. Choosing to remain in employment after having had a child and childcare facilities do not necessarily have to go together. I would prefer it if the labour market were to be a flexible one so that women have a choice. They have a choice whether to send their children to childcare facilities or playschools, whether to make use of flexible working arrangements, whether to work on reduced hours or whether to use telework. As yet most of these elements are still an alien concept in Malta. Although flexible working arrangements do exist in some companies usually it is left to the discretion of the management whether to 'grant' flexi-time or not. Women are usually seen as a burden when this is not the case. Flexibility can be used to the advantage of both the employee as well as of the employer. Furthermore, part-time employment and flexible working arrangement can be a method of generating employment because an employer would need two workers to do the work of a full-timer.

Children are not the sole reason that women do not enter or do not remain in the labour market. 'Family responsibilities' is a wide term which also includes care of elderly, sick or disabled relatives. As I already stated above, in Malta we lack quality, affordable and accessible childcare. However the situation is much worse when it comes to these carers. There aren't any or there are just a few quality, affordable and accessible structures for the care of the elderly and sick, which is again a big detriment for these carers who would like to enter into regularized employment.

³ NSO News Release 99/2005 *International Day of Families*.

The existing national insurance contributions might act as a disincentive for women to take up regularized employment, especially if the employment is a part-time one. Because of this, many women are currently working in an undeclared manner with all the negative repercussions this would have on their present and future. If one had to look at the future, clearly a woman who has never declared her income would end up without a pension, something which could lead to poverty.

The issue of job security, or rather lack of it, is another issue which might be of impact on the family. Having a flexible labour market with temporary jobs and definite term contracts, while creating more flexibility, may also lead to precarious employment, which may also have an impact on the family. Some people might hesitate to start a family or have a second child if they feel that their employment is not secure. While flexibility in itself is a positive issue it might also have negative repercussions on some people.

Society as a whole is changing and one of the major changes is that occurring at the workplace together with the changes to the family and to society as a whole that this brings with it. The idea of the male 'bread winner' is practically a defunct one due to changes in family models and women choosing employment as an option. Labour market participation of women with family responsibilities affects the concept of the traditional family, paid work and welfare state patterns of organization. How can we as a society, and especially the General Workers' Union as a trade union, help the evolution of working life without compromising family stability? As explained above, one of the answers to this dilemma lies in the creation of a flexible labour market and it is up to all the social partners to promote a flexible working environment which will facilitate the reconciliation of work and family life.

An other important aspect is the need for men to start taking responsibility for the family. We cannot expect women to work full-time and be a full-time housewife as well. No woman has as yet managed to create children on her own and the same goes for the care of the family. The family is the responsibility of both parents. In a recent study carried out by the Employment and Training Corporation with men who availed themselves of parental leave, the men in question reported a sense of satisfaction, bonding with their child and an overall positive experience. It is only through sensitizing people and education that a change in mentality can be achieved and this change might also help in the reconciliation of work and family life.

The Effect of Labour Policies on Employment

In 2004 Malta became a member of the European Union, which is known to impose policies on its member states. So whether we like it or not EU policies are applicable in Malta and affect the Maltese people. Although the EU has no full competence in the area of family policy, other policies in which it has competence affect the family. Let us take as an example the Lisbon Agenda. Has the Lisbon Agenda taken into consideration re-organisation of the labour market, of working time, of households and of families which is needed if we and all the other member states are to increase female participation in the labour market?

Another issue is the pension reform which is a topical discussion both at EU and at national level. Have the discussions on the pension reform taken into account family policies? A simple example is the proposed forty year contribution instead of the existing thirty years. This forty years contribution may have a serious repercussion on persons who decide to take career breaks. These persons may find themselves with less contributions than are necessary with the resultant impacts this would have on their pension. Government has proposed a two year sabbatical per child for parents who stop working due to family responsibilities but this has not been elaborated on during the Prime Minister's last press conference on the pension reform. Government is currently conducting cost-benefit studies on the matter of this sabbatical which the Prime Minister promised will be included in the legislation which will be presented to Parliament. If more women were to enter the labour market there would obviously be more National Insurance contributions and the sustainability problem would be diminished.

Conclusion

With the introduction of new and reinforced rights at the place of work, it was hoped that more women would be encouraged to enter the labour market. However this has not happened. Despite these new rights, there is still a lot to be done for the promotion of more women entering and staying in the labour market. In a survey conducted by the Workers' Participation Development Centre (University of Malta), out of the five hundred and fifty-four respondents who disclosed their age, it was found that 53.1% of the twenty to twenty-four year olds were in active employment, whilst this rate was reduced by nearly half in the age bracket of thirty to thirty-four year olds, with a participation rate of 26.7%.⁴ This report rightly points out that this result is likely to mask at least two separate forces at play, with the first one being that the older a woman gets, the more the likelihood of family responsibilities increasing. Therefore, married women or mothers are more likely to leave the labour market. Indeed the largest drop-out rate is between the age cohorts of twenty-five to twenty-nine years and thirty to thirty-four years, which are the peak rates of child bearing and rearing.

The second reason given is that younger females tend to be better educated than their older counterparts. This would suggest that these females would be more likely to develop a career-oriented and long-term commitment to their participation in the labour market. However, one of the concerns expressed by the National Commission for the Promotion of Equality for Men and Women is the "leaking pipe syndrome" where a large number of qualified women leave the workforce for family or other reasons.⁵ This further reinforces the theory that the Maltese labour market is not so family friendly. It is suggested that the long parental leave as well as the career breaks available to the public sector employees be also made available to employees in the private sector. One has also to take into consideration that not all women may want to stop working in order to take care of their family, but that due to certain constraints, find that that is the only option available. If more workplaces were to introduce the notion of working on reduced hours, job sharing, and teleworking, more women would be encouraged to stay in the labour market. With the rapid

⁴ Department for Women In Society, Ministry for Social Policy, Factors affecting Women's Formal Participation in the Malta Labour Market: Results of a Research Project, p. 16-17.

⁵ National Commission for the Promotion of Equality for Men and Women, Strategic Policy Directions 2004-2006, p. 2.

advances in technology, teleworking would not be of a financial detriment to the employer. Therefore, as stated in the Strategic Policy Directions 2004-2006 of the National Commission for the Promotion of Equality of Men and Women one of the measures that needs to be taken in order to promote gender equality in economic life, is “*sensitizing and encouraging employers and employees to work on work/life balance for both sexes.*”

One has also to take into account that women may want to still fully participate in the labour market and may not want to work on reduced hours, or take parental leave. Therefore, apart from the abovementioned measures, it is strongly recommended that affordable and reliable child care be available. Unfortunately, although in Malta one tends to find a lot of child care facilities, most of these tend to be quite expensive, with the result that women may not find it financially viable to remain in the labour market and avail themselves of these facilities. Another problem is that facilities tend to stay open on fixed hours, most of which do not coincide with the mother’s working hours.

TEENAGE MOTHERS - THE RIGHT TO WORK AND STUDY

JOSANN CUTAJAR

Introduction

Lone mothers tend to face economic disadvantages (Heuveline, Timberlake and Furstenberg 2003:48) Female-headed households tend to have the highest rate of poverty and the highest rate of welfare in Western countries (Sigle-Rushton & McLanahan 2002:3). This might be due to a number of reasons, especially if getting pregnant interrupted a mother's education and forced her into finding employment within the less secure sectors of the labour market.

In this paper the term single parent will be used to refer to never married persons who have children. Although this social category has particular interests and needs, it shares some interests and needs that are similar to those of other women and other lone parents. Lone parents in this paper refers to persons with dependent children who are not living with a partner of the opposite sex, who are single never married, separated, annulled, divorced or widowed (Abela 1998:45).

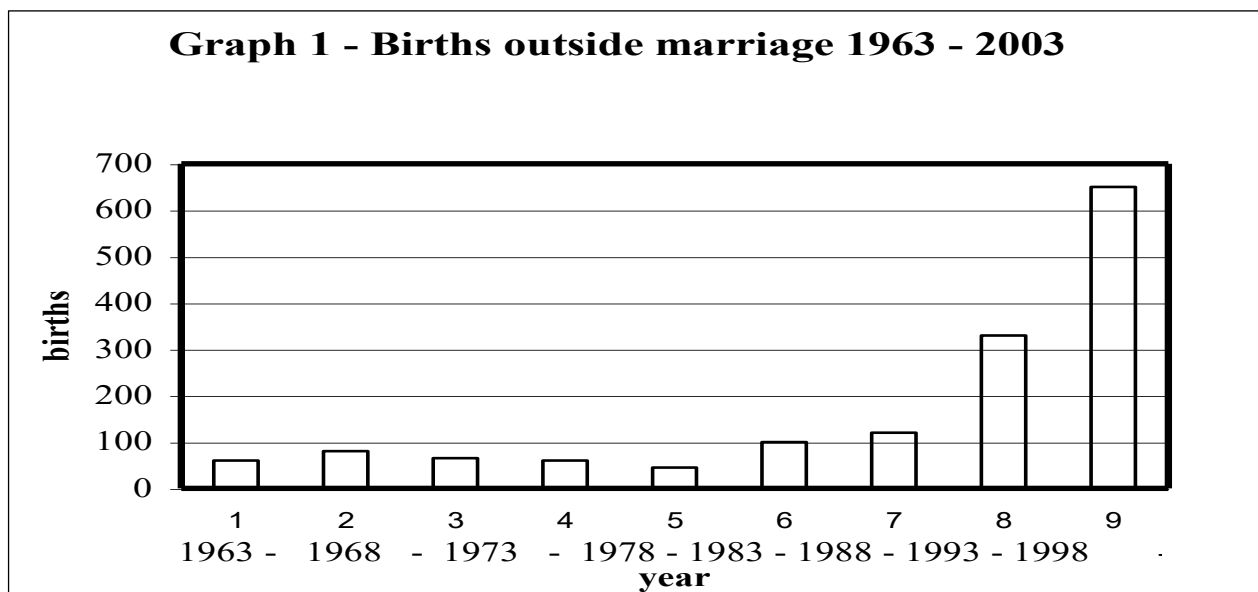
The main focus of this paper is going to be mainly on unmarried teenage mothers and how lone parenthood at a young age might affect access to education, employment and general welfare. The paper gives a cursory glance at some of the research carried out on this topic in the Maltese Islands and abroad to find out how differential access to education, employment and social services impact on young unmarried mothers, with what consequences. Although young unmarried mothers are often taken as a category, social factors and circumstances tend to render them heterogeneous. This means that policies, programmes and services need to be constructed and implemented to cater for the different needs of this social category.

Socio-Demographic Details

The percentage of births to single mothers is increasing in the Maltese Islands. As statistics elicited from the Discern web page and the National Obstetric Information System (NOIS) demonstrate, while in 1980 only 1 per cent of births were to unmarried mothers, by 2002 this had risen to almost 15 per cent of all births. The National Statistics Office (2004; 2005)

statistics demonstrate that births outside marriage stood at 16.80 per cent of all births in 2003, and this rose to 19.1 per cent of births in 2004 (refer to Graph 1).

Source: NSO (2004) Demographic Review 2003: vi.



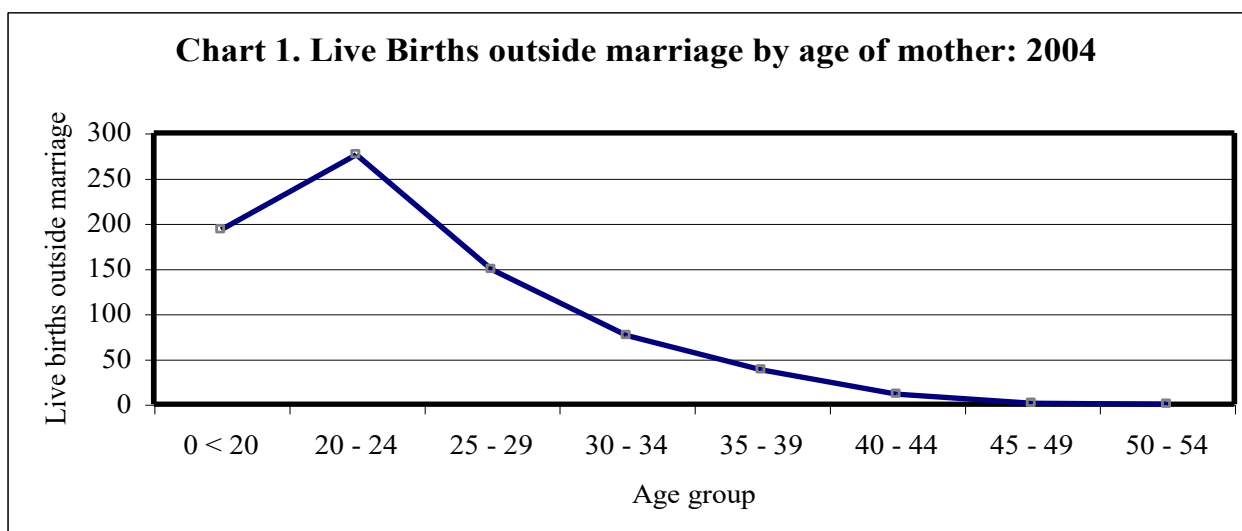
Heuveline, Timberlake and Furstenberg (2003:47) maintain that Western countries have seen an increase in the prevalence of non-marital childbearing in conjunction with a decline in marital fertility. When comparing the rates of single parenthood with those of European countries, one finds however that, relatively speaking, the rates of children born to single unmarried women in the Maltese Islands are quite low. They are more in keeping with the rates prevalent in South European countries such as Italy with 10 per cent, Spain (9%) and Belgium (11%) than the Nordic countries. In 2000 the majority of children in Sweden (55%), Norway (50+%) and Iceland (65%) were born out of wedlock (Sprangers & Garssen, 2003:4).

Heuveline, Timberlake and Furstenberg (2003:56) note that in European countries parental separation is nowadays more likely to lead to single parenthood than out-of-wedlock births. Whatever the cause of lone parenthood, policy makers in Malta have started taking note and envisaging comprehensive policies that cater for the needs of this social category (see Malta National Action Plan on Poverty and Social Exclusion 2004-2006 for example). As Heuveline et al. (2003:58) point out, single parenthood brings with it public and private costs - costs to states, parents, children and extended kin. Not everybody in Malta is agreed as to who or how these costs should be shouldered (see Abela 2002), whether it should be by the state, family, individual and/or non-governmental entities. What is clear is that policy-makers are awakening to the fact that the number of out-of-wedlock births is increasing alarmingly.

Table 1 - Age of Single Parents in 2004

Age Group	Age of Mother	% of Total Births to women outside Marriage	Age of Father
All Ages	744	-	744
Under 20	193	26	21
20-24	276	37	114
25-29	149	20	120
30-34	46	10	66
35-39	38	5	48
40-44	11	1.5	29
45-49	1	0.5	10
50-54	-	-	6
55-59	-	-	-
Unknown	-	-	330

Source: Adapted from Demographic Review 2004 (National Statistics Office 2005: 25).



Source: NSO, 2005: vi

As Table 1 and Chart 1 show, the majority of births to never married women in 2004 occurred to women under twenty-four. The NOIS Second Quarterly Report: April to June 2004 (2004:2) and First Quarterly Report: January to March 2005 (2005:2) state that the greatest number of deliveries occurred in the age group 25 to 29 years of age, that is 38 per cent of all deliveries. When one analyses Table 1, it is evident that with regard to single mothers, the greatest number of deliveries in 2004 occurred to mothers within the 20-24 age group (37%), followed by the under 20 age group. It is also evident therefore that single mothers tend to have children at an earlier age than the married counterparts. The National Action Plan (NAP) on Poverty and Social Exclusion 2004-2006 (2004:6) reiterates that it “is worrying that births out of wedlock to mothers aged 20 years or less have been continuously increasing from 0.6 per cent of all births in 1992 to 4.2 per cent of all births in 2002”.

Heuveline, Timberlake and Furstenberg (2003:55) maintain that younger mothers are more likely to give birth out of wedlock or in unstable partnerships. It is therefore more likely that these mothers end up raising their children with the help of their own parents and/or on their own, depending on the family's attitude to out-of-wedlock births. As Bezzina and Dibben (2002) underline, nowadays young unmarried mothers are less likely to be ostracized by their family of origin since the stigma of single parenthood, although still there, has abated. The NOIS (2004:2) pointed out that when asked who will help raise the child after delivery, 99 per cent of the mothers who had never married stated that they had support at home to raise the infant. This means that the bulk of these mothers gained assistance from their immediate family.

Table 2 - Births outside Wedlock 1960-2000

Year	Mother <19 years		Mothers >20 years		Total Live Births outside Wedlock
	All	Outside Marriage	All	Outside Marriage	
1960	330	9	8235	54	63
1965	246	20	5382	39	59
1970	227	19	5087	60	79
1975	265	18	5742	53	71
1980	155	14	5661	45	59
1985	160	21	5427	45	66
1990	144	24	5424	71	95
1995	142	59	4861	154	213
2000	239	143	4147	321	464

Source: Adapted from Tables 6.3-6.4 in Children (National Statistics Office 2002: 108-109).

When one takes a look at the age of mothers and live births in the last forty years, it is quite evident that on the whole, the majority of Maltese women are nowadays more likely to be having children in their mid-twenties. While the number of children born to teenage mothers was on the decrease in the eighties and nineties, there was an increase in births to mothers in this age group. Births to teenage mothers were more likely to occur outside wedlock than within with regards to the twenty age cohort. In fact when one compares the births to mothers under nineteen in 1985 with 2000, there was a six-fold leap. This phenomenon might be due to the fact that in the past pregnancy out of wedlock led to a shotgun wedding. Nowadays teenage pregnancy might not lead to the marriage of the young mother to the father of her child. Table 2 also demonstrates that in 2000, more than one third of the births occurred to single unmarried mothers under nineteen, rather than to unmarried mothers who were over twenty. What is worrying is that births to such young mothers can impinge on their physical and educational development.

Graph 1 also demonstrates the increase in births outside marriage between 1963 and 2003. While the rate of births outside marriage seems to be constant between 1963 to 1993, there is an evident increase in numbers in the last ten years. While the share of births out of wedlock was 2.2 per cent of all births in 1992 (NAP on Poverty and Social Exclusion 2004-2006, 2004:6), it rose to 16.8 per cent of total births in 2003 (NSO 2004: vi) and accounted

for 19.1 of total births in 2004 (NSO 2005:vi). The rate of total live births outside marriage therefore is still rising.

Family Household Types

Table 3 - Family Households in 1995

	Parents with Children Under 18 years	Total Number of Households with Children
One parent households	2226	7461
<i>Of which:</i>		
Families headed by mother	1821	5913
Families headed by father	405	1548
Couples with children	48694	63711

Source: Women and Men 1999 (Central Office of Statistics 1999:13).

Children born out of wedlock or to other lone parents such as separated, widowed and divorced women are more likely to be living with their mother, as Table 3 demonstrates. All in all, 79.3 per cent of all lone parents were female in 1995 (Central Office of Statistics 1999:116). The majority of lone parents tend to have the custody of one dependent child, although there are some that are raising more than one child (Central Office of Statistics 1999:116). Lone mothers, more than lone fathers, are likely to be dependent on welfare benefits due to their caring responsibilities which tend to impinge on their participation in the labour market. The NAP on Poverty and Social Exclusion 2004-2006 (2004:9) maintains that only “8.1 per cent single mothers hold full time employment in contrast to 35.6 per cent single fathers”. They are also more likely than men to hold a part-time job as their primary job, and are less likely to find ‘masculine’ jobs, occupations that tend to be financially better remunerated (Cutajar 2000).

The NAP on Poverty and Social Exclusion 2004-2006 (2004:9) adds that inactivity for women tends to carry a greater risk of poverty than for men. In fact in Malta the estimated at-risk-of-poverty rates for single parents stood at 55 per cent, the highest for all sub-groups studied (Ministry for Social Policy 2004:3-8). Single parents with dependent children, especially those in rented accommodation, tend to be the group most at risk of poverty and social exclusion in the Maltese Islands.

Regional Distribution of Family Types

In their analysis of the 1995 Census, Abela (1998) and Vassallo, Sciriha and Miljanic Brinkworth (2002) stress that the highest concentration of lone parent families was to be found in the Inner Harbour (see Table 4), followed by the Outer Harbour regions. In this analysis, lone parenthood was due to the death of partner, separation, birth out of wedlock, imprisonment and long-term rehabilitation. The number of female headed households was lower in the Western, South Eastern, Northern and Gozo and Comino regions. Abela (1998: 73) notes that 60 per cent of all lone female parents resided in the Inner Harbour (33.9%)

and Outer Harbour (26.4%) regions in 1995. With regard to lone female parents with dependent children (children under eighteen years of age), the majority, that is 64 per cent of these were living in the Inner Harbour (32.8%) and Outer Harbour (31.1%) regions (Ministry for Social Policy, 2004:13).

Table 4 - Regional Distribution of Family Types in 1995

Regions	Total	Male head	Female head
Maltese Islands			
<i>Type of family</i>			
Married couple without children	19191	18165	1026
Married couple with children	63711	60603	3108
Male lone parents	1548	1548	0
Female lone parents	5913	0	5913
Total	90363	80316	10047
Inner Harbour Region			
Married couple without children	5402	5148	254
Married couple with children	12944	12338	606
Male lone parents	452	452	0
Female lone parents	2077	0	2077
Total	20875	17938	2937

Source: Vassallo, M. et al. , 2002:50-1

The NAP on Poverty and Social Exclusion 2004-2006 (2004:13) notes that 38.6 per cent of all dwellings in the Grand Harbour “are dilapidated and only 3.3 per cent were built between 1991 and 1995”. When taking the two statements together, one can conclude that the bulk of lone female households are living in sub-standard housing. This sub-group is also to be found in an area with a higher incidence of long-term unemployment, and higher rates of unauthorised school absences, with dire consequences for the mothers and child/ren they raise.

Education

Although data for the 1995 census is not representative of teen never married lone parents because the majority end up living with their relatives until they become financially independent, it gives us an indication of the educational qualifications of lone parents who are heads of households. Differential educational opportunities have a consequent effect and are reflected in the unequal participation and position of women and female lone parents within the labour market (Abela 1998b:94).

Bezzina and Dibben (2002:28) report that teenage parenthood often results in the interrupted education of the young mother. Single teen parents are not the only sub-category among lone parents to have poor educational qualifications. As the figures within this section demonstrate, when comparing the educational attainment of female lone parents with that of other women, it is quite evident that the educational qualifications of this category tends to be lower than that of other women in Maltese society (see Table 5). They are more likely to

have no schooling or a primary standard of education when compared to the rest of their female counterparts. Data found in a NSO News Release 196/2003 states that only 9.5 per cent of persons living in single mother households have completed a post-secondary or higher level of education, when the rate stands at 14.9 per cent in other households. The lone parent's lack of cultural and material capital might have a concomitant effect on that of their offsprings.

Table 5 - Comparing Educational Attainment of Female Lone parents with Other Women (1995)

	All Women	Lone Mothers
No schooling	5%	14%
Primary	36%	53%
Secondary	41%	26%
Vocational	7%	3%
Tertiary	9%	3%
Non-Respondent	2%	1%

Source: Adaptation of Table 3.08 in Women and Men in the Maltese Islands (Abela1998: 55)¹.

Teenage pregnancy might lead to an interrupted academic trajectory for some but not for others, as Bezzina and Dibben (2002) and Castillo (2000) point out. This depends on the inclination of the young mother towards education as well as other circumstances. Bezzina and Dibben (2002:29) maintain that not all teenage 'girls' aspire or ever aspired to continue with their education. Some regard motherhood as a path to womanhood. This does not mean that all teenage pregnancies are planned pregnancies. Students with academic and career aspirations who find themselves pregnant might be forced to relinquish these plans if the necessary services and support are not available to enable them to continue with their education.

Whether or not there are differences in the educational aspirations of different categories of young mothers, there exist certain obstacles that prevent pregnant girls who are under compulsory school leaving age from continuing with their education. Castillo (2000) found that the majority of teenage mothers tend to drop out of school, especially those attending area secondary schools. The Education Division does not regard education as mandatory for pregnant students even if they are under sixteen (Bezzina & Dibben 2002:31). They can opt out of school as long as they attend the School Girl Mother's Unit (now known as Ghozza) where these students are provided with support services as well as an educational programme that enhances their academic development while helping them prepare for motherhood (see Ministry of Education website).

In their research Bezzina and Dibben (2002:93) found that some heads of secondary schools in the Maltese Islands did not encourage pregnant students to continue with their education in their educational establishment because they were afraid that these might serve as a bad example for their peers. Heads/principals of post-secondary institutions were described as being more 'helpful' when students reported their predicament.

¹ Categories were collapsed under one title to incorporate those who continue or did not finish certain levels of education.

Whether a teenage mother continues with her education or not depends on the stance taken by the individual head of school. It may also depend on the physical condition of the teenage mother herself. Some teenage mothers might be physically unable to attend school. Others might be under the misconception that they have to leave school because of their condition. Some drop out of school because they are embarrassed to be seen by their peers in their 'shameful' predicament (Bezzina & Dibben 2002:93-94).

All in all, though, the continued education of these mothers is essential both for themselves and for their child. Education is a means of ensuring their own and their children's better prospects. Social policies and attitudes that do not consider women as potential heads of households and preclude women from ameliorating their educational and marketable skills while promoting the male breadwinner model, do not take into consideration the fact that women do sometimes end up as heads of households. Social policies that insist on envisaging women as primary care givers are ensuring the continued poverty of lone female parents when they do not facilitate their access to educational and marketable skills.

Once the baby is born, other issues come to bear on whether or not the young single mother continues with her education. Financial circumstances might push some into entering the labour market at an early age, even though they might have the minimum of educational qualifications. Others find it hard to leave the baby behind and return to school. Some are made to feel guilty by those around them who might accuse them of gratifying their own ambitions at the cost of their child's well-being. Childcare responsibilities also render it more difficult to concentrate on school with a young child running around (Bezzina & Dibben 2002:93-95).

Although some teenage mothers might have to leave or are forced to leave school once they become pregnant, they can access other institutions that will enable them to continue their education. In 2004 there were two venues in Malta and one in Gozo where adult education classes prepared students to sit for O-level and A-level examinations, according to Education Statistics 2003-2004 (National Statistics Office 2005).

Institutes that offer post-secondary, vocational and tertiary education are less likely to prevent pregnant students who want to continue their education from doing so. Institutes offering post-secondary education include the Institute for Tourism, MCAST, Junior College, Higher Secondary, ETC and the University of Malta. Individuals with an interrupted academic history can in fact apply for certain courses at the University of Malta as mature students. Some of these institutions provide an academic education, while others offer skills training courses. The majority provide career guidance and/or job placements to those who seek help. The University also provides childcare facilities at it-Tajra for children between two and three years of age.

Not all courses and/or educational institutions are available in all regions of the Maltese Islands. Even when they are, the courses offered in a particular locality might not be of the same quality and quantity as those available in another region (Cutajar 2000). This means that students who want to specialize or continue their education in a particular field might need to travel. Teenage mothers are less likely to have access to private transport (see NSO News Release 196/2003) either because of their age and/or financial means. This means that

they are more dependent on an efficient and frequent public transport system or the willingness of family members to ferry them around. Gozitan students might also have to migrate to Malta in order to continue with their post-secondary, vocational and tertiary education (Cutajar 2000:146), leaving behind their child to be taken care of by their parents. Some have to cross between the two islands on a daily basis, rendering it more difficult to carry out their roles as mothers and students.

Another structural barrier that young unmarried mothers face when continuing their education concerns childcare. The lack of affordable and convenient childcare might prevent some from continuing their education because not all young mothers have next of kin who are willing or able to take care of their children while they are at school. The EU Expert Group on Gender, Social Inclusion and Employment (EGGSIE, 2005:36) maintains that in Malta there is a “serious lack of childcare facilities”.

When they return home, these mothers have to meet domestic, family and study requirements. Domestic commitments, family illness and other domestic crises can result in erratic study patterns that can lead to loss of confidence due to missed study and affect aspirations to continue with education (Kember 1997:235).

Like other mothers returning to school, teenage mothers can find out that the courses are scheduled at a time that cater to the interests of students who do not have dependent children to take care of. When courses are held in the evening and at a location that is far removed from their place of residence, they might find it hard to arrange for childcare. Finances might be another obstacle that might prevent certain individuals from continuing their education. Not all courses are free.

Not all individuals might be aware of the educational opportunities that are available. Lack of awareness of these opportunities and/or lack of career guidance, can lead to certain individuals missing out on their education. These mothers need information, practical help, counseling and support to enable them to improve their educational chances, support which is not always forthcoming depending on which institution they choose to approach.

Lack of educational credentials and marketable skills render it more difficult for teenage unmarried mothers to find well-paid jobs. Continuing their education is complicated by their mothering role. Women with high levels of human capital are more likely to find well-remunerated jobs; those with lower levels of education remain dependent on social benefits. Education is therefore essential to help lone mothers become financially independent and escape the poverty trap that early pregnancy might push them into.

One needs to point out that the mother’s lack of access to education might have a domino effect on the education of other individuals living in lone-female-headed households. Figures provided by the NSO News Release 196/2003 demonstrate that only 9.5 per cent of persons living in single mother households have completed a post-secondary or higher level of education. The rate for other households is 14.9 per cent.

Employment

Lack of educational credentials and labour market skills can deprive young unmarried mothers from finding well-remunerated jobs that enable them to maintain themselves and their child/ren. Labour market participation is however also affected by one's gender, age, marital status, regional location and other social factors.

Maltese women, unlike their European counterparts, are less likely to participate in the labour market. Malta has the lowest overall female employment rate (34.5%) when compared to the other EU member and candidate countries (Joint Assessment Paper on the Employment Policy Priorities of Malta, 2001). In 2005, the employment rate for women was 32.8 per cent when compared to the male rate which stood at 74.1 per cent: on the other hand the activity rate for females stood at 37 per cent, while that for men was 77.9 per cent (NSO News Release 53/2006). This low employment rate for women might be due to the cultural tenet that holds that a woman's place is in the home, taking care of her children. This cultural expectation is implicated in social policies that define women as financially dependent on men: when a male breadwinner is not around, the state steps in to safeguard the interests of the children (Cutajar, 2000). On the whole, Maltese women seem to have internalized the cultural tenet that their primary responsibility in life should be to their family.

Gender stereotypes are also evident in the kind of occupations men and women take up within the labour market. According to the October-December 2005 Labour Force Survey (NSO News Release 53/2006), women were concentrated in education (16.2%), wholesale and retail trade (15.2%), health and social work (12.6%) and manufacturing (12.5%). Men, on the other hand, were found in manufacturing (21%), wholesale and retail trade (13.9), construction (12%) together with transport, storage and communication (9.6%). Women are therefore more likely to find work as clerks, teachers, cleaners/maids, sales persons, machine-tool operators, secretaries, teachers and nurses, all perceived as feminine occupations. Men tend to be found in 'masculine' sectors such as the retail sector where they act as deliverymen/drivers, the armed forces, police force, construction and craftsmanship sector (Central Office of Statistics 1999:40). This shows that in the Maltese Islands, men and women tend to make gender-specific occupational choices.

Not all men and women opt for the same occupations. Female lone parents were more likely to be found working as office clerks (18%), sales and services (17%), personnel and protective services (11%), models and demonstrators (10%), machine operators and assembly (6%), associates in teaching (3%) and health (6%) sectors. Only 3 per cent were in the professions according to an analysis of the 1995 census (Abela 1998b:74). Abela notes that a number of female lone parents were working as corporate (8%) or general managers (2%). Male lone parents were congregated in elementary sales and services (13%), personnel and protective services (7%), physical engineering (6%), associate professions (4%), building industry (11%), driver or mobile-plant operators (8%), metal or machine workers (7%), labourers (7%) as well as corporate (11%) or general managers (2%). When analysing these statistics one needs to keep in mind the fact that all lone parents were taken into consideration. On the whole, the tendency was for lone parents to be concentrated in low-paying jobs, although some of them occupied decision-making positions with better

working conditions than the rest of the occupations mentioned. One still has to wait for the 2005 census data to come out to find out where female and male lone parents are located in the labour market.

On the whole, men tend to outnumber women in managerial and professional jobs (NSO News Release 53/2006). Hanson and Pratt (1995:128) found that women with professional and semi-professional occupations continue working when their children are born. This was because of the flexible schedule of these jobs added to the fact that they were less strenuous than manual work. A post-secondary or tertiary standard of education is a prerequisite for recruitment to these types of occupations.

Table 6 - Percentage of Female Lone Parents by Employment and Marital Status of Total Women

	Employed	At School
Single never married	14.2	0.3
Married	9.8	-
Separated	25.6	0.2
Annulled/Divorced	32.1	0.1
Widowed	4.9	0.1

Source: Adaptation of Table 2.15 in Women and Men in the Maltese Islands (Abela 1998: 4).

There also seems to be a link between marital status and whether or not women work. Single, never married women are more likely to be economically active unlike their married female counterparts with family responsibilities. In society there are more married women than lone female parents. Nonetheless a higher proportion of lone female parents from each category seems to be in employment (see Table 6). A higher proportion of annulled/divorced and separated heads of households tend to be economically active (Cutajar 2000:92). More recent data demonstrates that only 25 per cent of single mothers are gainfully occupied, while the unemployment rate for single mother heads of households stood at 17 per cent when compared to other households which was 5 per cent (NSO News Release 196/2003). Here it would be interesting to compare like with like, that is the statistics for single and married women who have caring responsibilities. It might still be the case that single mothers might have a higher employment rate than their married counterparts. It would also be useful to find out where they are located within the labour market, at which level and whether they hold a full or part-time job.

Unmarried mothers, like other lone parents, are their family's main breadwinners. This means that the financial circumstances of a household together with parental pressure might sometimes push the unmarried teenage mother into the labour market once the baby is born (Castillo 2000), even though this might be to the physical and academic detriment of the individual concerned. Half of the unmarried mother respondents in Castillo's (2000) and Bezzina and Dibben's (2002) studies were working to support their baby when the studies were conducted. The rest were waiting for the child to grow up before they went out to work. One respondent could not work or study since her baby was disabled and needed constant care.

From the qualitative research carried out by Bezzina and Dibben (2002) it was evident that the social benefits the young mothers received were not enough to maintain the new addition to the household. A number of the young mothers had to join the labour market, in spite of their lack of educational qualifications. Others were working and studying at the same time (Bezzina & Dibben, 2002). In some cases, the grandmother had to find employment: this occurred in families where the mother of the teenager was separated from her husband (Castillo 2000:75). Castillo (2000:64) also notes that in some cases, the boyfriends of the young mothers were pushed into the labour market, abruptly curtailing their intentions of going on to university.

Bezzina and Dibben (2002:96) point out that social benefits are not enough to maintain an adequate standard of living. Some young unmarried mothers take on part-time work to top up the benefits. The respondents in the said research considered their role as welfare recipients as a transient phase in their life until they secured a more stable income. Their educational qualifications however precluded them from finding a more independent option. However, finding employment was not the main aspiration of all teenage unmarried mothers (Bezzina & Dibben 2002:111). Some of the respondents wanted to get married in order to stop being economically dependent on their parents and the state. They transferred this dependency onto their husband.

Bezzina and Dibben (2002) maintain that some young unmarried mothers might choose part-time work when affordable and accessible childcare is not available. Part-time work might offer mothers the flexibility of coping with employment and childcare. Although part-time work reduces the need for childcare, it does not provide an adequate income (Millar 1997:155). Lack of good day care is according to Millar (1997:158) the largest barrier to employment for all women with dependents.

Caring responsibilities as well as lack of educational qualifications minimize these mothers' employment options. The limited number and nature of jobs available to young unmarried mothers with their level of education, render the goal of financial independence impossible to attain for those who do not continue with their education (Bezzina & Dibben 2002:33). Part-time work is poorly paid. At the same time, certain sectors are unprotected by labour legislation and those working in these sectors are deprived of the fringe benefits enjoyed by workers in full-time employment.

Hanson and Pratt (1995:124-5) maintain that women with family responsibilities, especially those without access to adequate transport, prefer employment close to home. These women's choices are curtailed if the employment opportunities available within their residential area are limited. Employment opportunities vary by region in the Maltese Islands. The type of work opportunities found in Gozo, are for example, limited in quality and quantity in relation to Malta (Cutajar 2000). As Falzon (1999:18) points out, job availability per capita in 1990-1997 in Gozo, was 88 per cent that found in Malta. Although Gozitan women are more likely to be in gainful occupation in relation to their Maltese counterparts (Darmanin 1998:66-7), the type of employment available is poorer in quality and quantity. This might affect young unmarried mothers' aspirations to continue with their education since the labour market opportunities in Gozo tend to affect whether they

continue with their studies and what educational trajectory Gozitans opt for (Cutajar 2000: 91).

Income

Abela found that a substantial number of female-headed households (56 per cent of this household category type) declared that they received an income that came below the poverty line. Households headed by men were more likely to stand above the poverty line. In fact 81 per cent of male headed households were above the poverty line (Abela 1998b:98).

With regards to the declared income of lone parents, Abela (1998b:100) estimates that 57 per cent of all lone parent households received an income that relegated them below the poverty line. Only 28 per cent of the lone parent households had an income above the poverty line (15% of the respondents did not answer this question). The majority of male headed lone parent households (51%) declared an income that was above the poverty line, and only 39 per cent of this household category mentioned an income that came below the poverty line (Abela 1998b:101). The reverse was true for female lone parent headed households: 21 per cent declared an income that registered above the poverty line, while 62 per cent stated that they received an income below the poverty line. These figures do not bode well where dependent children are concerned since this renders them vulnerable to the direct and indirect consequences of poverty. The NAP on Poverty and Social Exclusion 2004-2006 (2004) maintains that in 2000, 55 per cent of all single parent households were at risk of poverty. This figure is still high when compared with that of Abela (1998b), however it demonstrates a reduction in the number of lone female households that are facing poverty. This however might be due to the fact that different formulae were used to come up with the figures.

According to statistics given by NSO News Release 196/2003, the average annual net income for single mother households stood at Lm5669, when for other households it was Lm8252. This lower income, according to this news release was due to a lower activity rate by both head of household as well as other persons living in this household. This is because persons deriving from a lone mother household were less likely to be in employment when compared to other households (18% in contrast to 37%).

When comparing single parent households having dependent children with other household types, one finds that their net average disposable income is lower. While the average disposable income for two adults with dependent children ranged from Lm7552 to Lm8108, depending on the number of children in the household, that for single parent households stood at Lm4596 (National Statistics Office 2003b:67). The National Statistics Office in fact found that single parent households with at least one dependent child have a higher risk of poverty than any other household type (National Statistics Office 2002b:40).

This lower income may be due to a number of factors. Statistics in the Household Budgetary Survey 2000 (2003b:53) demonstrate gender discrepancies in the declared average annual net salary. When tax and national insurance contributions were deleted from the gross salary, men received an average net salary of Lm4935 and women Lm3467 in 2000 (see Table 7).

Table 7 - Net Income Distribution by Sex

	Males	Females	Total
Net Salary in Lm	4935	3467	4479

Source: Adapted from Household Budgetary Survey 2000 (National Statistics Office 2003b:53).

There is also a regional difference in declared incomes. Households with the lowest disposable income tend to be located in the Southern and Northern Harbour regions according to the Household Budgetary Survey (National Statistics Office 2003b:68). When one looks at the distribution of the disposable income by age group, it is quite evident that the majority of those under twenty have a disposable income of Lm2000 and less (National Statistics Office 2003b:60). This means that young unmarried mothers have an income that is below that received by others in any other age group.

The NSO News Release 196/2003 maintains that this lower income is due to lower activity rate in these types of households. According to this data, only 41 per cent of the total income for these households derive from salaries. The bulk of the income gained by single mother households derives mainly from social benefits.

Since the declared income of women tends to be low, it is no great surprise that more women than men depend on social assistance (see Table 8). This dependence is mainly due to the fact that caring responsibilities, lack of partners and/or lack of educational qualifications might prevent them from perceiving financial self-sufficiency as an option. Statistics given in Table 7 demonstrate that 84.2 per cent of single and 87.5 per cent of separated women are the recipients of social assistance. Proactive policies that will encourage more women to continue with their education together with an infrastructure that will help alleviate some of their caring responsibilities, might encourage more women to participate the labour market and hence help wean them off state benefits. This is not enough, though. Family friendly employment opportunities as well as a better transport system would be needed.

Table 8 - Beneficiaries of Social Assistance to heads of Households under 60 years of age

Marital Status	1998		1999	
	Male	Female	Male	Female
Couple	-	-	-	-
Married	156	384	195	418
Single	958	274	1028	316
Widowed	132	-	135	12
Divorced	47	4	50	5
Legally Separated	899	57	1101	70
De facto Separated	635	69	616	70
Separated Maintaining wife	-	-	-	1
Unknown	115	34	4	1
Total	2942	822	3129	893

Source: Adapted Table 8.02 in Women and Men 1999 (Central Office of Statistics 1999:122).

Welfare Benefits

Bezzina and Dibben (2002:37) said that their respondents regarded the non-contributory welfare benefits they derived as quite generous. These respondents might have found social assistance for single mothers adequate because all of them were living with their family of source which helped to cushion some of the financial burden they would have had to face if they had been living on their own. As the NAP on Poverty and Social Exclusion 2004-2006 (2004) underlines, single parents with dependent children and paying market rents as tenants face dire financial straits.

Young unmarried mothers are entitled to social assistance if their capital resources do not exceed Lm6000. The maximum rate of social assistance in 2006 was Lm37.80 per week for a single parent with one child plus an Additional Bonus of Lm1.34 if residing alone. Single parents receive a further Lm3.50 per week for each additional child. The Department of Social Security also gives an allowance of 50c per week to those single mothers who are renting accommodation. Single parent and child/ren who reside with another family are entitled to 75 per cent of the Assistance for Single Unmarried Persons, which stood at Lm28.35 in 2006. They can also apply for an Electricity and Water Meter Rebate (Lm12) and the waiving of the surcharge. Each single parent household is entitled to 16cc of water free per person, if the Water Services is duly informed.

Single parents can work as long as their youngest child is still a minor without losing the right to the full benefit as long as they do not earn more than Lm20.08 per week. In other words, the single parent can work as long as the income received in conjunction with other benefits and maintenance does not exceed the national minimum wage. When young mothers receive income from other sources - whether it is a university stipend or maintenance from the father of the child - these are deducted from the social assistance. Lm1.71 is deducted per week if the father of the child is paying maintenance.

Beneficiaries of social assistance are also entitled to an additional bonus of Lm58 every six months. They can also apply for Children Allowance if their income per week does not exceed Lm20.08. The Children Allowance amounts to Lm112 every 13 weeks. Those who are eligible for the above benefits can also apply for the Milk Grant. This is available to those mothers who according to the doctor's advice cannot breast-feed after the birth of their child, or if they are breast-feeding, need additional milk. They receive Lm6.20 per week for 40 weeks after the child's birth. These welfare recipients are also eligible to apply for the Pink Form that entitles them to free medicine. All this information is found on the welfare.gov.mt website.

Young mothers who are attending the University of Malta can also apply for a supplementary grant, which entitles them to Lm60 extra per month. All in all, lone parents with multiple sources of income are better off than those dependent only on social benefits (Cutajar 2000:258). Single mothers who are solely dependent on social assistance would be deriving an income that was lower than the national minimum wage.

A person on social assistance can also apply for maternity benefit (which in 2006 stood at Lm312) and have their O-level Matsec examination fees waived. Those who are not living

with their family of source but want to live on their own, can also apply to rent state subsidized accommodation or buy accommodation from the Housing Authority. This information was supplied by a social worker who works closely with young single unmarried mothers. In spite of all these benefits, the NAP on Poverty and Social Exclusion 2004-2006 (2004:12) points out that the “at-risk-of-poverty-rate of single mothers in 2000 stood at 55 per cent (EU 15:35 per cent in 1998)”, a high rate indeed, comparatively speaking. One needs to think what would happen to these households if these benefits were to be reduced or disappear overnight.

Bezzina and Dibben (2002) believe that welfare benefits may in a way act as a disincentive that dissuades young unmarried mothers from continuing with their education and/or striving to find better employment opportunities. They may come to depend on welfare in the long run, and by so doing, they will be relegating themselves and their children to living only a step removed from poverty. Lack of childcare and educational credentials might render it impossible for some to find employment with lucrative salaries. Without sufficient cultural capital and marketable skills they are caught in a poverty trap. Some might have the sufficient cultural capital but might have to depend on social assistance until their children reach school going age if affordable childcare is not available.

Lone parents can only make rational choices if their knowledge and comprehension of the educational, taxation, labour market, welfare benefit and services system is adequate (Cutajar 2000:245). Research has shown (see Bezzina and Dibben, 2002; Cutajar 2000) that the service providers approached by lone mothers are not always fully conversant with the structures, services, benefits or legislation lone parents need to access, and hence they might end up by giving them the wrong information or advice. When change in marital status occurs, clients have to access myriad services providers to acquaint themselves with their rights and obligations (Cutajar 2000). Dependable information is hard to come by. Handbooks and/or non-governmental organizations that have the necessary information regarding legislation, structures and services would enable single unmarried mothers to make informed choices. One should however add though, that not all lone parents seek the advice and/or help of professional or non-governmental entities (see Abela 2002).

Housing

Vassallo, Sciriha and Miljanic Brinkworth (2002:149) maintain that lone parents and their dependents either live with their family of source or seek cheap housing options. In this section, the focus will be on lone female heads of households who were living on their own when the 1995 census was conducted in order to find out the type of housing this family type resorts to.

Abela's (1998:108) perusal of the census statistics leads him to conclude that in 1995 men were more likely to be homeowners, whatever their marital status. Separated, annulled, divorced and never married lone female parents were more likely to live in rented unfurnished flats. A substantial number of single never married lone parents (10%) however were living in privately owned residences free of charge. Abela maintains that this category of lone parents was more likely to find help from the community, church or state where living arrangements were concerned.

Abela (1998:109) also notes that two-parent in relation to lone-parent households have more access to amenities. In fact, when comparing the two family types, lone parents were less likely to have a fixed telephone line, a bathroom or toilet basin, kitchen and/or heating. Female lone parents in relation to their male lone parent counterparts were more likely to have a kitchen but lacked some of the basic amenities mentioned above. According to Vassallo et al. (2002:151), 43 per cent of female heads of households lived in dwellings without a bathroom and kitchen in 1995. Around 35.7 per cent of these women did not have a kitchen, while 47.6 per cent did not have a bathroom.

Abela (1998:109) notes a gender and age difference in the availability of basic household amenities. Younger lone female parents, like their older male lone parent counterparts, were less likely to have access to some of the amenities mentioned above. This made him conclude that older male lone parents and young female lone parents tend to live in substandard housing conditions.

The NAP on Poverty and Social Exclusion 2004-2006 (2004:12) maintains that among all single parents, women (75.8%) are more likely to live in rented tenure. Not all single mothers however live in rented accommodation - 42.1 per cent do. The rest of the single mothers, 56.5 per cent are home owners, while 1.4 per cent are using premises free of charge. The NAP adds that single persons in rented accommodation are at a higher risk of poverty than home owners.

The 1995 census revealed that the highest number of substandard housing were to be found in the Inner and Outer Harbour regions, namely in localities such as Valletta, Paola, Cospicua and Hamrun (Central Office of Statistics 1999:137). These were the localities within the Inner Harbour region with the highest number of substandard dwellings. Birkirkara and Qormi, localities within the Outer Harbour region, also had a considerable number of substandard housing. The fact that the majority of lone female parents seem to be concentrated in these localities means that the majority of these were living in substandard housing in 1995. These also are the regions and districts with the highest rate of unauthorised school absences and the lowest average scores in Maltese and language. This means that lone female heads of households with dependent children who find residence in these districts/regions are not only living in substandard housing but might be exposing their children to an anti-school culture.

Support from Family Members

Young unmarried mothers tend to depend heavily on the support their family of source gives them. Castillo (2000) together with Bezzina and Dibben (2002) say that young mothers would not have been able to cope if they had not received help from their immediate family.

The informal support offered by the young mother's family often enabled the individual concerned to continue developing her selfhood, become a competent mother, continue with her social life, acquire an education and become economically active (Bezzina & Dibben 2002:13-16). This is because the family offers the young mothers housing, advice, transport, childcare, financial as well as emotional support. They also provide insurance against labour

market uncertainties. One should also add that whatever the young mothers gain from such an arrangement, it is often counterbalanced by the cost of loss of privacy and autonomy. It should also be pointed out that not all families willingly give the support needed. Family members might resent some types of involvement and this, together with loss of privacy, can lead to conflict between the young mother and other family members, which could lead to further stress in the family (Sigle-Rushton & McLanahan 2002:7).

On the whole though, the family of source seems to bear the brunt of providing the support and inducement needed to enable young unmarried mothers to remain in school and enter employment. Sigle-Rushton and McLanahan (2002) maintain that doubling up with other adults also enables young unmarried mothers to cope with poverty and economic deprivation. Not all families have the informational and financial capacity to provide the necessary support and/or advice, though.

State programmes that might help these families cope with this responsibility or that can act as a substitute when the family of origin is not ready or capable of helping young unmarried mothers after the birth of the child are in their infancy. One can mention the Lone Parents Pilot Project run by the ETC with the objective of enabling 12 lone mothers to train and work (Ministry for Social Policy 2004:18). Homestart is a project initiated in 2006 with the aim of providing home help to mothers. There are also voluntary organizations like Dar Guzeppa Debono that offer accommodation to young mothers who are homeless, as well as free legal advice, counselling and support to lone female parents who seek help.

In Britain and the United States there are organizations that offer young unmarried mothers supervised accommodation and/or programmes that enable them to carry on with their education. These organizations also provide them with skills training, job placements, transport, health education, parenting skills and/or childcare (for example New Chance and Stepping Stone in the United States). These services are not available in the Maltese Islands and the stress of helping a young unmarried mother is having its consequences on the family of origin.

Recommendations

The state has the obligation to find collective solutions to enable its citizens to become economically active while juggling with family responsibilities. As things are, female heads of households tend to face poverty if they opt for motherhood. The Roman Catholic Church and the Maltese welfare state are conjoined in their complicity of relegating women to the private sphere, but in so doing they are forcing poverty on them. Legislative and policy changes need to be looked into to enable women, especially those with caring responsibilities, to enjoy the social, political and economic rights their unencumbered counterparts benefit from. The necessary infrastructure needs to be implemented so that the state can act as the guarantor of the economic and social welfare of all its citizens and not just of the few. To ensure that single mothers as a category do not lose out, a number of recommendations will be delineated in this part of the paper.

Access to Education

The differential provision of adult education and training provisions in the Maltese Islands means that not all individuals can have access to them. The quality and choice of courses offered in certain localities do not help to increase the marketable skills of all those seeking to further their education. This means that those who do not have access to an extensive efficient transport system are less likely to utilize the educational and training provisions differentially dispersed on the Maltese Islands.

Teenage parents and other mothers are less likely to access educational programmes or go out to work if they do not have access to reliable, affordable and efficient day care facilities with flexible opening hours. Childcare is essential since certain educational institutions offer courses at hours that are inconvenient for individuals with caring responsibilities. As Galea (1998) and Cutajar (2000) point out, adult training programmes are designed with people who do not have caring responsibilities in mind.

Bezzina and Dibben (2002:31) insist on the creation of educational programmes that allow student mothers to work at their own pace, giving individual students the attention they need. Educational institutions need to offer young unmarried mothers the possibility of repeating certain academic years and/or to withdraw from school for a while and re-enter once their caring responsibilities are sorted out. Educational programmes offering modules would enable mothers and/or other clients to finish courses at their own pace.

Bezzina and Dibben (2002) together with Cutajar (2000) insist that human capital enhancement programmes are not enough if employment opportunities, especially family friendly ones, are not available. Cutajar (2000:250) adds that when educational and training programmes are designed, these should be executed in close cooperation with business and industry in the geographical area in which the women live.

Employment

Women with young children often seek occupations with family friendly hours to enable them to juggle with employment and caring responsibilities. Unmarried mothers might resort to part-time work because it will enable them to take care of their children and receive social assistance at the same time. Individuals who opt for this kind of arrangement are likely to relegate themselves into a cycle of poverty without being fully conscious of the long-term consequences.

As it is, the state is not offering any incentives to these young mothers that will encourage them to continue with their education. Policy makers can induce young mothers on welfare to attend school until they attain their A-levels, certificate or diploma by creating something like the Learning, Earning and Parenting Programme (LEAP) in circulation in the United States. This compulsory programme in a way forces young mothers to continue with their education because welfare grants depend on their attendance at school (Bezzina & Dibben 2002:30).

Maltese legislation enables the reconciliation of work and family responsibilities by offering working mothers employed within the public sector the possibility to apply for reduced working hours and/or responsibility breaks. Female employees are also entitled to thirteen weeks of paid and one week of unpaid maternity leave. Civil servants can further avail themselves of a one time career break of three years' parental leave to take care of children under five (Cutajar 2003:436). Family friendly measures are available for those who have a job within this sector. Further action needs to be taken to render other sectors more family friendly.

Parental leave or time off from employment with wage replacement needs to be introduced to enable the parent to take care of sick children (Cutajar 2000:258). These changes need to be implemented if policy makers want to facilitate women's participation in the labour market. Cutajar (2000) adds that such measures should be introduced in conjunction with quality daycare facilities that offer flexible opening hours so that childcare is equally balanced between society and family.

Personal Rights vs. Derived Rights

Lone parents are more likely to be dependent on welfare benefits. Motherhood tends to impinge on labour market participation, with the consequent effect that female heads of households are more likely to be found living below or around the poverty line. Their rights to social welfare derive from the fact that they are raising children without the help of a male partner. Derived rights however do not provide young mothers with the whole range of social protection available to those who pay national insurance contributions. Those who work and pay national insurance contributions have access to sick leave, unemployment and maternity benefits (Brocas, Cailloux & Oget 1990:81). Employment related personal rights provide insured persons with the benefits proportional to their earning, which might turn out to be more lucrative than non-contributory benefits on a long-term basis.

Fiscal Policy

Since the late nineties, lone parents with dependent children have the possibility of applying to have their income tax computed according to the married rate. The state can however shoulder some of the financial burden of child rearing by allowing parent/s who spend money on childcare to deduct it from their total taxable income (European Parliament - Directorate General for Research 1996:52). An alternative is to set up a comprehensive and affordable state-financed childcare system.

Service Providers

Research conducted by Cutajar (2000) and Bezzina and Dibben (2002) demonstrate that service providers - whether they are teachers, counselors, social workers and/or social security officers - are not always familiar with the plethora of legislation, policies, services and benefits available. This can lead them to misinform their clients, or to direct them in favour of one option when there are better choices available. These service providers are sometimes the main and only source of information for their clients. This means that service providers need to be adequately informed, and to relay this information to their clients in

easy to follow language without taking for granted the fact that their client is aware of any other option (Cutajar 2000:261). Bezzina and Dibben maintain that it is the client's right to know of all the options available to them in their circumstances as well as having the pros and cons of each option delineated to them by the service provider. It is only then that the client can make an informed choice.

Advisory and Guidance Bodies

Cutajar (2000) together with Bezzina and Dibben (2002) argue that voluntary and non-governmental organizations play a crucial part in offering support and information to lone parents. The European Parliament (Directorate General for Research 1996:135) has said that states should support and improve on the services that these establishments offer when it comes to offering information, guidance and training across the range of legal, vocational and social systems. The state should, according to the European Parliament, offer financial help to self-help organizations that want to act as advisory and guidance bodies. As Bezzina and Dibben underline, these can be an important source for support and information to teenage mothers, and could alleviate some of the burden shouldered by the family of source.

Conclusion

Young unmarried mothers need support to become independent - support from family members, the community and the state. The best route to financial independence is education. Without the necessary infrastructure and support these lone parents are less likely to be able to augment their academic credentials, and less likely to find well remunerated employment. They will end up becoming a 'burden' on state finances.

Social policies that regard women primarily as mothers and not as workers, might lead women with caring responsibilities to become dependent on welfare benefits. These benefits are just enough to ensure that lone parents and their children 'cope' financially. These benefits are just crutches, though. If they were to be removed, welfare beneficiaries would have nothing to lean on, and their immersion into poverty would not be prevented.

The most important move for individuals, the community and the state concerned is to provide the infrastructural support to empower lone parents by providing them with the resources that will induce and help them to ameliorate their qualifications to enable them to get better jobs. At the same time, one should underline that it would be useless to induce young never married mothers to continue with their education without ensuring that there are family friendly employment opportunities available.

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QUALITY LIFE FOR THE UNBORN CHILD

TONY MIFSUD

The Civil Society Project of the European Documentation and Research Centre of the University of Malta presents an opportunity to combat discrimination against unborn children, especially under its AGE category. The main consideration, in this regard, should be “the best interests of the child” as recommended by the United Nations Convention on the Rights of the Child.

The official annual birth rate in Malta and Gozo at present is about 4000.

The Womb is the Child's First World

Thomas Verny, a pioneer in the field of pre- and perinatal psychology, a father, a psychiatrist and professor of human development at St. Mary's University in the USA, in his book “The Secret Life of the Unborn Child” says that *by creating a warm emotionally enriching environment in utero, a woman can make a decisive difference in everything her child feels, hopes, dreams, thinks, and accomplishes throughout life.* Verny says that the unborn child is a deeply sensitive individual who forms a powerful relationship with his or her parents, and the outside world, while still in the womb.

While it is widely believed that the human fetus is a blank slate, lacking true sensation, emotional affect, or even the ability to feel pain, pregnant women through the ages have intuitively known what scientists have only recently discovered: that a mother's unborn child hears her voice and senses her love. The unborn child has significant sensory capabilities. He can see, hear, and feel.

By the fourth month after conception the unborn child has a well-developed sense of touch and taste. He can perceive a bright light shining on the mother's abdomen; if the light is particularly bright, he will lift his hands to shield his eyes. At five months, he will react to a loud sound by raising his hands and covering his ears.

The unborn has the capacity to perceive and remember sounds of speech, to recognize a story heard repeatedly in utero, and to recognize his own mother's voice. He has formed the brain structures necessary for learning, and even awareness, some time between the 28th and 32nd weeks of development.

Prenatal psychologists see the very core of human personality forming in the womb. Studies show that this personality formation takes place through intensive communication between parents, especially the mother, and the unborn.

We know that most of what a mother eats, drinks or inhales is passed through her bloodstream into the body of her baby; maternal emotions are transmitted physiologically as well. Stress hormones travel through the mother's bloodstream to the fetus, inducing the same stressful state in the unborn child. Babies respond not only to a surge of adrenaline, but also to mother's *behaviour*. When she pats her stomach, talks, sings, or dances, the unborn child knows that mother is actively there. Communication also occurs on the *psychological* plane, with baby responding to mother's deepest thoughts and feelings. This does not mean that every fleeting worry, doubt, or anxiety a woman has rebounds on her child. What matters are deep persistent *patterns* of feeling, such as chronic anxiety or a wrenching ambivalence about motherhood.

On the other hand, thoughts infusing the baby with a sense of happiness or calm set the stage for a balanced, happy, and serene disposition throughout life. Because a child is the product of an unhappy marriage or the baby of a cool, ambivalent, or even catastrophic mother does not necessarily mean he will develop an adult case of schizophrenia, alcoholism, promiscuity, or compulsiveness. Nothing about the mind is that neat. But the womb is the child's first world. How he experiences it, as friendly or hostile, does create personality and character predispositions.

Verny also presents research indicating that the role of the father is much more significant than is generally accepted. His support is essential to the mother's, and thus, to their child's wellbeing; what affects his sense of commitment to the marriage most deeply, is if and when he begins bonding with his child. Profound parental and environmental influences also occur during and immediately after birth. The newborn responds best to gentleness, softness, and a caring touch, as distinct from bright lights, electrical beeps and the cold, impersonal atmosphere often associated with a medical birth. All this means that a mother's ability to remain calm during her pregnancy, to communicate a sense of love to her unborn baby, and to orchestrate a joyous, positive birth, contributes immensely to the emotional and physical health of her child for the rest of his life.

Maimed for Life

On the other hand there are dangers to the unborn child when a pregnant woman smokes, drinks, or uses any kind of drugs. Several mothers have been known to look back in horror at what their substance use did to their children. Drugs, alcohol and tobacco adversely affect the development of the unborn child at each month of pregnancy.

Emotional interviews with parents have shown the long-term psychological and behavioural problems of drugs on born children. These can be prescribed drugs, drugs supplied over the counter or obtained in the street, such as heroine, cocaine, and marijuana. Both sporadic use and consistent abuse can be damaging to the mother and the child, before and after birth. With every sip that the mother takes from the icy can the tiny baby growing inside her belly becomes more and more drunk.

One mother, 29, knew that as a pregnant woman she should not drink. But she had drunk during her previous pregnancies and each of those babies looked OK to her. So she continued to drink. When she felt as if she'd had too much beer and was about to pass out, she used cocaine, so she could drink some more. As the mother got more and more drunk, so did her child in her womb. Doctors know that in these conditions the child starts having seizures and may have fetal alcohol syndrome (FAS), the debilitating syndrome, the leading, yet preventable, cause of mental retardation. FAS can also cause brain-damage for life.

When crack cocaine was introduced doctors were terrified of its impact on unborn children. Yet studies have shown that alcohol is more damaging than any other drug and that it is the most destructive drug to a developing child. It is known that it is more destructive than heroin, more destructive than crack, and more destructive than cocaine. Yet it is a legal substance everywhere. It is socially acceptable everywhere. Ironically society is instantly critical of a woman who would damage her baby with illegal drugs but the two substances that do the most damage to the baby are alcohol and nicotine.

William Chambliss, development director of the National Organization on Fetal Alcohol Syndrome in Washington, D.C., says that millions of dollars in research has not found a level of alcohol that is safe for an unborn child. "There are tens of thousands of kids with FAS who drank in the womb," he said, "because they could not say no when Mom picked up the bottle".

Pediatricians in many parts of the world contend that innocent children are being devastated by alcohol; that binge drinking does a lot of harm to a developing baby and that society is today creating a group of children who will be unemployable. They become adults who cannot function. Prenatal alcohol exposure is a major cause of destroyed human potential for an enormous group of people.

There are very clear indications that an undisclosed number of unborn children in Malta and Gozo are suffering grievous bodily and psychological harm, wilfully or not, because of the consumption of drugs, alcohol and tobacco by their parents, in marriage and outside of it during, or before, pregnancy. Unfortunately official local statistics do not show these facts clearly, yet, especially in connection with alcohol or tobacco.

Clear facts are coming out, however, and are appearing in the official statistics in cases of drugs consumption by parents. The Drugs Detoxification Centre at St.Luke's Hospital can supply the statistics of children put on methadone for a number of months immediately after birth because of the drugs habit of one or both parents.

There are fears, also, that would-be mothers and pregnant women can be exposed to chemical and toxic substances in their own families with great harm to women and their unborn children.

On the 8th September 2005, the UK Daily Mail reported in its front page that research had revealed that "babies in the womb were being exposed to cocktails of toxic chemicals and that their blood was swimming with dangerous compounds found in everyday household cleaners, perfumes and even pans and furniture".

The same UK paper reported earlier how parents of unborn children with suspected disabilities, even superficial ones, were being advised, or even led, to dispose of their children.

In the Times of Malta of the 6th April, 2004 a letter “Death by Expertise” described how a Maltese 12 week old baby, described as “a picture of health” might never have been born. Two teams of the most eminent experts from hospitals on both sides of the Atlantic counselled the parents to have the pregnancy terminated because of “an increased risk of foetal or perinatal death and a major concern for long-term neurodevelopment”.

“The parents,” the letter continued, “staunch in their Christian faith and in the belief in the value of all life and steadfast in their feelings towards the fruit of their love vowed to face the future, and whatever it brought with it. As far as they were concerned the fact that the baby was likely to be born with almost severe impairment did not diminish her worth by one iota.”

Dr. Louis Deguara, Minister of Health, addressing a conference on the well-being of the unborn child in February 2005 said that he was very apprehensive about the harm done to mothers and their unborn children because of alcohol drinking. Citing the Health Behaviour of School-aged Children Survey held in Malta, other European Countries and the USA he showed that Maltese youth are amongst the biggest consumers of alcohol. This is a very alarming revelation indicating very bad prospects for present and future unborn children in the Maltese islands. It is not known if any studies have been carried out in Malta to establish the connection between drinking, especially amongst young people, and its effects on newborns.

The Minister declared that the Maltese have a special predilection for their children and that they normally changed their life styles upon getting pregnant. He cited Maltese mothers as saying they give up smoking upon getting pregnant. Rightly so. He said he would rather hear them say they quit smoking and alcohol altogether.

Torturous Deaths

It is a known fact that every year, at present, a considerable number of voiceless and defenceless unborn children in Malta suffer indiscriminate torturous death, through abortion, in its many forms, in spite of local legislation to the contrary going back more than a hundred years. Official UK statistics include these abortions. Others procured elsewhere, outside Malta, apparently do not appear in any set of statistics. Others, maybe procured locally, may be escaping the attention of the local authorities. We rarely, if ever, hear of cases of abortion in the local courts.

Survived an Abortion Attempt

On the 6th December, 2005 BBC News in the United Kingdom reported that Gianna Jessen’s mother, in the USA, was seven-and-a-half months pregnant when it was decided to abort the foetus she was carrying.

A saline solution was injected into Gianna's mother's womb, which doctors thought would kill the foetus within hours. Most unusually the procedure failed and Gianna was born alive, thanks in part to a shocked nurse. She was so taken aback by Gianna's live delivery that she summoned an ambulance to whisk her from the abortion clinic to the hospital. She weighed only two pounds at birth and needed to stay in hospital for nearly three months.

Gianna had cerebral palsy as a direct result of the procedure carried out on her in the womb. "The saline solution injected into the mother is to burn the baby, which gulps it in the womb," she said. "But after being literally burned alive for 18 hours I was delivered live". In an ironic twist of fate the abortionist had to sign her birth certificate. In 2005 American born Gianna, aged 28, was in London to give her message against abortion, also before the House of Parliament.

Anxiety and Stress

Professor Bea Van den Bergh of the University of Louvain in Belgium was invited to Malta by the Malta Union of Psychologists in December 2004 to present her studies about whether high maternal anxiety during pregnancy enhances the offspring's susceptibility to childhood disorders and whether specific prenatal vulnerability periods exist.

Anxiety at 12 to 22 weeks postmenstrual age turned out to be a significant independent predictor whereas anxiety at 32 to 40 weeks was not. It was established that results are consistent with a fetal programming hypothesis.

The Role of Civil Society

In February 2005 during the Conference on the Well-Being of the Unborn Child organized by the Movement for the Rights, Protection and Development of the Unborn Child in the Maltese Islands together with the Health Promotion Department, it was said that the unborn child was considered either as a precious gift or an unwanted child by his parents. It was pointed out that stress is inevitably connected with pregnancy outside marriage.

Reference was made to the sterling services given to teenage pregnant mothers by the "Unit Ghozza" of the Education Division and Dar "Guzeppa Debono" of Gozo. An appeal was made for more educational programmes for adults, especially during the Cana Movement courses for engaged couples, on the harmful effects of stress and anxiety on the unborn child, especially during the 12th and 22nd weeks of pregnancy.

The mixed seminars for boys and girls secondary schools organized by the Personal and Social Development Unit of the Education Division were cited as very good educational programmes for youths. A strong appeal came out of the conference to strengthen this unit.

The conference noted that society has a great role to play to increase awareness about the rights, protection and development of the unborn child, especially among Maltese politicians, about the values of life from its beginning, the family and the roles of the individual members of the family.

Family-friendly measures are called for to encourage fathers to take their responsibilities more seriously in this regard. Fathers and mothers have to realize that networking and interdependence are new names of the game, and so they have to share family responsibilities in a more equitable way.

Grandparents, who so far are rendering very valuable child minding services to working parents will not be able, any more, to carry out these roles as they themselves are increasingly remaining active in old age in one way or another. In these new circumstances anxiety and stress amongst working parents are bound to increase.

Counselling services are called for especially when parents find themselves faced with moral and ethical questions which the medical profession cannot answer, especially when faced with the prospects, or the realities, of a child, even an unborn child, with physical or mental disabilities.

This is where the media can play a very important role in increasing awareness of the rights, and needs, of unborn children and in promoting meaningful solutions. A code of ethics can help the media promote the culture of life and assist it in desisting from adopting marketing practices which devalue life.

The conference showed its concern about, and also suggested careful inquiry into, the reasons why the rates of caesarian section and induced birth in Malta seem to be above those established by the World Health Organisation.

The Role of the Workplace

Pregnancy is considered as a normal physiological process in a woman's life. At this state a woman conceives her infant and nourishes and provides a safe environment within her body until the full term of pregnancy. During the post-partum period this maternal care is carried out in a more direct way especially through lactation.

During the stages of pregnancy there are certain changes which are brought about by the hormonal change occurring within the woman's body. The woman has to adapt herself and sometimes modify her usual routine and activity in relation to her place of work and her home.

Many consider that in present-day Maltese society certain family values which were regarded as sacred and untouchable are no longer so; this might be a result of the attitudes many people are adopting in relation to marriage and the rearing of children.

The financial burden that young couples are facing in order to buy their home or flat is a stark reality. This situation is influencing the way they prioritise their projections in relation to their family.

The need for the mother to stay at home and leave her job when she discovers that she is pregnant is being considered by many a luxury afforded by only a few women.

In these new circumstances it is not clear if the female pregnant workforce is aware of the stressful environment at the places of work. This might be present in different ways such as radiation, long standing hours, longer working hours, and the handling and lifting of bulky or heavy materials.

The awareness of the woman's right to modify her duties and eliminate the stressful elements around her is to be respected by employers and managers alike and not regarded as an excuse to dismiss the employee.

In this connection the trade unions have the duty, and the means, to empower their members to be more aware of the need to reduce or eliminate stress or hazardous situations affecting a pregnant woman as this will directly protect both the woman and her unborn child.

The rights of the child in Maltese legislation should be updated and implemented in relation to the concept of a family-work balance. Labour and industrial legislation, in particular, needs to be updated also to uphold the rights of unborn children for protection from harmful substances at the place of work, and for wholesome development.

Structures, like a *family unit*, can provide professional people who will work with families in order to monitor developments and assist them in their needs. A family unit can work for the provision of support services, especially child care centers, both by the state and by the private sector. It can include family nurses in an expanded community health service modelled on the community health visitor. It can also work for more accessibility to affordable social housing

The Malta Movement for the Rights, Protection and Development of the Unborn Child

During 2004 the Movement for the Rights, Protection and Development of the Unborn Child in the Maltese Islands was set up. At present it consists of 41 affiliated national organisations, including the three political parties, the major trade unions, the association of local councils, a considerable number of government departments, agencies and commissions, and a significant number of civil society and church organisations, including the two Colleges of Parish Priests of Malta and Gozo.

Between June 2004 and May 2005 four national conferences were organised by the Movement or by one of its affiliated member organisations. On the 6th May, 2005, the Deputy Prime Minister and Minister of Justice and Local Affairs, Dr. Tonio Borg, announced the "national proposal" to entrench the law on abortion, which makes abortion illegal, in the Malta Constitution.

The same rationale as that used in the 1989 United Nations Convention on the Rights of the Child is behind this initiative, that is "that the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth".

Similarly Section 9th of the Malta Commissioner for Children Law of 2003 authorizes the Commissioner "to promote the highest standards of health and social services for women

during pregnancy and to promote social care and protection, including adequate legal protection, for children both before and after birth.” On the same lines is a clause in the new law on Domestic Violence whereby the unborn child will be considered “a member of the household” for protection purposes.

The lobbying of the Malta Movement for the Unborn Child (MMUC) has been a very determining factor in the introduction of these concepts about the unborn child in recent Maltese legislation.

In its educational campaign the Movement has printed and is distributing 60,000 copies of a leaflet on this subject in Maltese and English. It also has a very telling video on this topic, entitled “When your unborn child is on drugs, alcohol or tobacco” brought from the USA two years ago by the Social Assistance Secretariat, the founder of the Movement.

The MMUC held another national conference in March 2006 to study further these phenomena and draw closer to possible preventive and remedial action in the overall interests of unborn children.

Charter on the Rights, Protection and Development of the Unborn Child

The Movement has also drafted a Charter on the Rights, Protection and Development of the Unborn Child in the Maltese Islands to promote quality life for the unborn child in the Maltese Islands, and beyond. The main aim of the Charter is for the institutions and organizations in the movement, and others outside of it, to promote, in their own way, the rights, protection and development of about 4000 conceived, but still unborn children, each year, in the Maltese Islands.

Other aims are to increase awareness in the Maltese Islands of the unique privilege, enjoyed by both parents as equal partners, in the conception of the unborn child; of the special opportunity for both parents to help the unborn child develop from the moment of conception, its full potential and its personality; and of the big responsibility of both parents, and of the political, industrial, legal, social and other agents, to protect the unborn child from all physical, mental and emotional harm throughout the full term of pregnancy until it is born. This as befits the respect and dignity due to all human beings, always and everywhere, from the moment of their conception, until born, and after.

For these reasons the Charter aims to encourage all the organizations in the movement as well as other organizations, to commit their respective organization, its individual members, and others, to promote, with all their means, the interests of all unborn children in the Maltese islands and beyond.

The Movement believes that this initiative deserves to be, and can be, diffused beyond Maltese shores, amongst other societies, cultures, religions and civilizations. The unborn child has no frontiers and its dignity is respected everywhere and at all times.

The Multicultural Society - Secularism, Christianity and Other World Religions on Individual Rights, Family Values and Development

A civilized society is judged by the way it protects the rights of its weakest members - the disabled, the sick, senior citizens, and unborn children. To stand up for the rights, protection and development of the unborn child reflects one's support for the most fundamental of human rights. All world religions agree that human life is sacred and that destroying it is a serious offence. They agree that the unborn have an inalienable right to life.

UN Child Summit, May 2002, Declines to Endorse Abortions

In May 2002 delegates to the United Nations General Assembly Special Session on Children tentatively agreed on a declaration of goals. The term "reproductive health services" was expunged from the document. A human rights activist said the compromise language needed no annotations on abortion. The US, the Holy See and various Muslim states had opposed abortion and never wavered from their commitment to life and family.

Judaism holds that life is precious and that abortion is something which is clearly of a moral nature. Prominent Canadian Rabbi, Rabbi Reuven P. Bulka wrote in the Ottawa Citizen of May 21, 2000 that abortion is not a women's-rights issue but a foetal-rights issue.

Hindu rituals (sanskars) begin before a child is born. Hindus offer prayers for the mother and child with emphasis on healthy mental development of the unborn child. Hindus believe that the mental state of a pregnant woman affects the unborn child. Psychologists in the western world have come to confirm this view.

The Faith and Development Seminar held in Malta on the 26th Nov, 2005 by the Commonwealth People's Forum, which was attended by Christians, Muslims, Hindus and Buddhists dwelt at length "on the gross disparity in the relative value of human life". It recommended the setting up of a multi-faith advisory council. One recommendation was to evolve strategies and mechanisms to operationally bring together civil society organizations and faith-based organizations to promote integrated development.

Immediately after Independence, 40 years ago, Malta made an impact on the world scene when, irrespective of its small size but because of its special characteristics, it successfully promoted the concept of the Sea as the Common Heritage of Mankind.

A similar opportunity has arisen for Malta to assert, again, before the world community that "*all men are created equal*" and to propose that all unborn children, wanted and loved or not, the common beginners in all mankind, and "created equal" everywhere, should be considered the "common heritage" of all humankind and that their *rights, protection, care and development* should be the common moral and political responsibility of the world community *in word, on paper and in deed*.

The proposal fits also into the concept of Malta as a Centre for Peace, a bridge between Christian Europe and Islamic North Africa in the Euro-Mediterranean zone, where Malta is

already playing a very vital strategic political role. The two main religions in the area, Christianity and Islam, value very highly the dignity of human life from its very beginning.

Compassion

All religions emphasize also the vital need for compassion. Cardinal Desmond Connell of Dublin declared: “The genuineness of our conviction about the right to life of the unborn child must be matched by our willingness to give support to those for whom the prospect of the birth of a child creates difficulties which they feel unable to face”.

A National Plan

A national plan is recommended by which the government, the opposition, the trade unions and civil society will work closely with the professional bodies and the university to form policies and enact laws which will protect workers and their children, “before as well as after birth” and strengthen and support Maltese and Gozitan families. The formulation of a strategic plan will help all those working in this field to find a balance between the needs of work and the family according to the resources of the land.

The Maltese people are showing repeatedly, in one social survey after another, by means of official declarations in the Maltese Parliament, by the civil and church authorities and by civil society, that they value highly human life from the moment of conception and that they recognize themselves as leading protectors of children, “before as well as after birth” and veritable promoters of their interests on the local, European and world scene.

When the Committee on Economic, Social and Cultural Rights of the United Nations, in November 2004, urged Malta “to review its legislation on abortion and consider exceptions to the general prohibitions of abortion for cases of therapeutic abortions and when the pregnancy is the result of rape or incest,” apart from comments by the Maltese bishops, of outstanding importance was the Malta Government’s reaction, through the head of the Prime Minister’s Secretariat that “the Maltese government does not agree with the Committee’s recommendations to review Maltese legislation on abortion and that it considers that abortion is in complete contradiction with one of the main tenets of the United Nations Convention on the Rights of the Child, namely that all articles in the best interests of children are paramount.”

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CELEBRATING LOVE, HEALING AND GROWTH: REDEFINING MARRIAGE

REV. DR. JOSEPH MIZZI
DR. ANNA MARIA VELLA *

Introduction

The traditional Maltese family based on marriage is gradually being challenged. We are noticing quite a number of young people opting for cohabitation, saying that they are afraid to commit themselves, fearing that a life commitment will mean surrendering independence and autonomy.

In this paper we would like to highlight the beauty of marriage and family life. In a society which focuses mainly on “doing” - in other words on “productivity” - the notion of “being” present to others and family life is not seen as valuable as work. So, we would like to pinpoint that “family is the warm feeling you have when you know that someone cares and appreciates you just as childhood is an opportunity to grow and develop in a time of innocence” (Mary Daly, *Families and Family Life in Inland Challenges for the Future*, 2004, p. 26).

The family is extremely essential for the well-being of the individual. The well-being of the family, which is based on the strong relationship between the members, the psychological traits of the parents and the socio-economic circumstances of the family will influence very much the happiness and the growth of each individual.

Man’s Deepest Vocation: Love

The vocation of every person, both those who marry as well as those who choose the virginal state, is precisely to love and to be loved. The apostle and evangelist, St John tells us that “God is love” (1Jn 4, 8). It is by loving that we resemble more and more God, who for us Christians is a communion of persons, referred to as Father, Son and Holy Spirit. Jean Luc Marion says that it is precisely love which makes us human. God inscribed this vocation to love as he loves in our bodies, by creating us male and female (Gen 1, 27) and called us to become “one flesh” (Gen 2, 24). This order of love was seriously distorted by sin. Through sin man wanted to decide for himself what is helpful and what is not helpful,

* In consultation with Dr. Jack Dominian, Dr. Tony Macelli, Dr. André Camilleri and Fr. Louis Camilleri.

that is what is good and bad. He did not want to accept and to receive from God what is good and bad for him. Man wanted to break the relationship there was between the Creator and the creature. Christ's mission was to restore this order of love, to remind us that man and woman are called to love each other faithfully and totally. Unfortunately throughout the centuries this vision was not always understood in a proper way.

A New Consideration of the Body and Sexuality

The Second Vatican Council and subsequent theological reflections helped us to move from a vision of what is allowed and forbidden to a new vision which is more Christ-centred. Christianity does not reject the body. The *Catechism of the Catholic Church* tells us “‘The flesh is the hinge of salvation’. We believe in God who is creator of the flesh; we believe in the Word made flesh in order to redeem the flesh; we believe in the resurrection of the flesh, the fulfilment of both the creation and the redemption of the flesh” (CCC 1015). The Christian is invited to look at his body from the perspective of God and see how valuable the body and sex really are. Pope John Paul II in his Wednesday Audiences given from 1979-1984, entitled *Theology of the Body*, says that our body has a nuptial meaning. Our body incorporates not only the physical aspect but also the spiritual dimension. Our body is called to love. This love is expressed in the gift of oneself to another. The difference between male and female is not accidental. The difference is not without intrinsic value. It is precisely here that God's plan reaches its fulfilment, for “a man leaves his father and his mother and cleaves to his wife, and they become one flesh” (Gen 2, 24).

Man cannot live in solitude. It is only in giving oneself that man can actually find himself. The Second Vatican Council says that man “cannot fully find himself except through a sincere gift of himself” (GS 24). Since the giving of oneself, entails the giving of the most precious thing that a person is, it cannot but be an exclusive gift. Thus, it cannot be given to more than one person nor can it be for a determined period of time. This union between man and woman is oriented for life. This openness for life breeds love and creates the family. When the couple acts against life they will contribute to what Pope John Paul II calls the “culture of death” for they will breed death. Some people nowadays are completely terrified of the idea of being open to life. We all know that the conjugal act not only unites the couple, but also has the intrinsic meaning of openness to life. When this latter aspect is blocked surely egoism takes over the couple. On the contrary, one can also notice a big number of people who are totally taken and carried away by sex. The current obsession with sex is precisely the fear of engagement, as Susan Griffin has shown so well in her book *Pornography and Silence*: “These pages will argue that pornography is an expression not of human erotic feeling and desire, not of a love of the life of the body, but of a fear of bodily knowledge, and a desire to silence eros.” (*Pornography and Silence: Culture's Revenge against Nature*, London, 1981, 1.)

The Conciliar and Canonical Perspective

“The intimate partnership of married life and love has been established by the Creator and qualified by his laws” (GS 48). God himself and not man is the author of marriage and God has endowed it with various purposes.

As we can notice from biblical revelation, marriage is between one man and one woman, of equal rights and duties, for their whole lifetime. Marriage is rooted in the consent which the man and the woman exchange, in front of a bishop/priest/deacon and two witnesses. This union is a lasting one. The moment the couple legitimately exchange their consent they create the bond of marriage. Although marriage has much in common with a juridical contract, for example, the presence of witnesses and the signing of documents, it is more in the nature of a covenant that is a pact, rather than a contract. This shift of emphasis from contract to covenant was more or less undertaken thanks to the special thrust given by the Second Vatican Council. Influenced by the personalistic philosophy, the Council saw that a marriage pact entails a bigger share of commitment and duty than an ordinary contract.

In this covenant, there is the complete and total gift of oneself to each other. There is unconditional love where the parties are always attentive to understand each other, ready to forgive each other and to restart again. The couple complements each other and they accept each other reciprocally. In this way they create the communion of their whole life.

Marriage as defined by the above-mentioned Council is “an intimate communion of life and love” (GS 47). Hence, this union in its very nature is ordered for the good of the spouses to be of mutual help and service to each other and for the procreation and the education of children. The union of man and woman of its nature require unity and indissolubility. In other words, this union excludes all forms of polyandry and polygamy and it is indissoluble and exclusive. These characteristics constitute the dignity of marriage and are the very basis and foundation for a stable and healthy society. Though unity and indissolubility are gifts given by God to the couple one should not forget to mention that the couple are called to give their share, in other words, to collaborate with God’s grace available to them in the Church’s sacrament.

Moreover, the couple should not be closed on themselves but they should rather be open to new life. The unitive meaning is so thoroughly interrelated with the procreative meaning that union is compromised if the spouses do not remain open to procreation.

The 4 pillars of Marriage

Dr Jack Dominian, in his book ‘Living Love’ describes 4 pillars that are needed to keep a marriage going. These are: *sustaining love, healing, growth* and *sexual intercourse*.

Sustaining Love

Falling in love is one thing, but sustaining this love is another. The Catholic Church insists that this love should be for life and that only death separates the spouses. Dr Dominian gives five principle experiences in order to sustain love, that is:

- Availability
- Communication
- Demonstration of affection

- Affirmation
- Resolution of conflict

Availability: for a married couple means that they experience being there to eat together, to talk, and to watch television, to go out and go on holiday together, to sleep in the same room. This togetherness is a specific expression of love, and lends strength to the Fairbairn's theory that our fundamental orientation of life is towards another person. Physical availability is complemented by emotional availability. Married couples disclose layer after layer of themselves to each other since they feel secure in each other's presence, and so they slowly become really one. At times of difficulties spouses unburden themselves and sharing these feelings in a loving way deepens love. A spouse misses this love if not enough time is spent together because of work, because of other commitments, because of children. Work-family balance is crucial for the couples' well-being and so is the balance between the time spent alone together as a couple and with other people. Socializing too much is as dangerous as working too much, especially if the couple are not having any time on their own.

Communication: This is the most important pass-word for stability in marriage. Winnicott stressed the importance of communication through touch in childhood and it is equally vital to spouses. Touch is a signal of recognition, affection and reassurance. There are also non-verbal communications which are also of vital importance to a relationship. Tender looks, a smile, our body language, looking at each other or away from each other, are all means of communication which are of great importance. Verbal communication is a complex exercise which women find easier than men to carry out. Women often need to talk and be listened to. They may not need an answer to their problem, but want only an attentive ear. (Men are from Mars and women are from Venus, chapter 3, by John Gray). Men find both talking and listening difficult tasks to follow and unless a couple finds the method how to iron out these difficulties, more problems with communication ensue.

Demonstration of affection: Couples, like children need hugs caresses and kisses as much as they need oxygen! Men emphasize sexual intercourse while women need demonstration of affection. They have to be told repeatedly that they are loved and appreciated. Humour can be used to show affection and being made to laugh is felt by women as a way of having the spouse's attention.

Affirmation: Adults like children need to be affirmed. Spouses need to hear that things have been done well. Unfortunately many open their mouths only to criticize a poor meal or an unfinished odd job! Appreciation of loving acts and of tasks accomplished is not costly but has profound implications for marital love.

Resolution of conflict: Intimacy and conflict are inevitably linked, and so anger and conflict will be present in marital life and need careful handling. The presence of conflict is not a sign of marital breakdown. A quarrel is an occasion for developing a deeper for something which is still missing. Calming down by calming and soothing words, by an apology, by a cuddle, will lead the way to a more peaceful discussion and understanding to what went wrong and what hurt the other spouse.

Healing

After some time from the marriage date, spouses start to realize that the person they have married is after all not so perfect and needs constant help and support to go through life! He or she may lack self esteem, confidence, or have a tendency to feel unlovable; inclined to feel easily rejected and criticized; finds it difficult to register love and retain it; repeatedly needs reassurance; feels insecure, excessively anxious or unsure of themselves; is overassertive, argumentative, or reticent, apologetic and silent. These are not the serious problems of aggression, morbid jealousy, paranoid tendencies and the extremes of gambling, alcoholism and drug addiction, but the ordinary problems which most people struggle with, and may be caused by our past wounds. These wounds may be psychological or spiritual. They may be caused genetically or through life traumas. They may be mild or severe. In all cases, marriage may help to heal these wounds or cause further trauma. If the spouse does not attack the sufferer by considering him 'self-centred' and selfish, but loves him as he or she is leads to healing of the spouse. 1 John 4:18, says that punishment is associated with fear, and in fear there is absence of love. A simple form of healing is to replace lack of love with its opposite. Instead of insecurity, the spouse is given abundance of reassurance, to their lack of confidence, a wealth of affirmation, and so on.

Another mode of healing is to help the spouse see who he really is and to gently help him move away from the false image he portrays. The shift from the false to the real helps the spouse become more genuine with him and with others. Acceptance of self as we truly are is a step towards healing.

Affirmation and encouragement are other ways of helping a person walk up the path to inner healing, thus making the person whole, and much more lovable. All this process needs consistence and one should never give up. 'You must therefore set no bounds to your love, just as the heavenly Father sets none to his' (Matthew 5:48.)

Growth

Healing is the basis of growth that is a feature of marital love. Although physical growth and the development of the IQ finish around the age of 25 years, humans continue to mature emotionally for many years after. There is a continuation of the growth of the personality between Freud's theories on the first half of life and Jung's on the second. As a person matures he moves from intelligence to wisdom, and the spouse can contribute to this process by loving the person, showing lacunas lovingly and praising achievements.

Another way of defining growth is the emotional movement from dependence through independence to interdependence. That is from a life totally dependent on adults, to one where one can cope well on one's own, to a choice where although one can be totally independent, one chooses to offer all one's talents to another person and let them be of service to him. If a spouse encourages his partner to grow into new areas and experiment new talents this makes the relationship very exciting and both spouses grow. At the heart of growth is not only the acquisition of new skills but the sense of continuity that allows the person to penetrate the successive layers of his self and recognize them as they surface.

Sexual Intercourse

According to the Second Vatican Council

‘This love is uniquely expressed and perfected through the marital act. The actions within marriage by which the couple are united intimately and chastely are noble and worthy ones. Expressed in a manner which is truly human, these actions signify and promote the mutual self-giving by which spouses enrich each other with a joyful and thankful will.’

Sexual Intercourse is the consummation of sustaining, healing and growth. Sexual desire often comes along after a couple has spent time together, communicated effectively, demonstrated loving affection, affirmed one another or resolved conflict. Sexual intercourse is an act of love that is the fulfilment and consummation of these experiences and this often accompanies healing and growth. Sexual intercourse in catholic marriage speaks a language that says, ‘I have chosen you above all other human beings to be the person I will love, cherish, want, need and appreciate all my life.’ In the process the man affirms the femininity of his wife and the woman affirms the masculinity of her husband. Sexual intercourse can be an act of reconciliation after a time of misunderstandings and conflict. An invitation for intercourse by one of the spouses is a powerful signal that shows the other person is needed and wanted. It is a recurrent act of faith, hope and love in one another, independent of the physical and psychological outcome. Finally it is the most beautiful way to show gratitude for all that has been done and offered during the day.

Marital Breakdown

It is important to analyse and study why so many couples are breaking up and so many cases of separation are on the rise. One can argue that it is all caused by the women’s emancipation socially, educationally and economically. We have moved from dependence to independence but did not grow on to interdependence. Another reason could be the profound diminution of marriage as a sacred event. (Singh J.P. 2004. The contemporary Indian family in B.N. Adams and J. Frost (Editors) Handbook of world families (Chapter 6) Thousand Oaks CA Sage). Then there is the change of families from producing and consuming units to simply consumers. This leaves them with little reason to tolerate a bad marriage. Marriages often finish because of disagreements, mutual accusations, hostility, arguments, quarrels or emotional withdrawal from each other. But the damage begins early with the slow or rapid erosion of trust, companionship, and negative over positive affect, absence of affirmation and affection, loss of sexual interest all of which pave the way for divorce.

Marriage can be divided into stages, and in each stage there are different causes for separation and divorce.

First Stage: the first five years. The commonest reason is the slow or rapid disappointment in the spouse married. There is the shift from idealisation of the spouse to the total disappointment in the same person. Another reason could be the immaturity of one or both partners, who find it difficult to separate from the family of origin and make a separate and independent life with their partner. They have to keep on referring to their family of origin

for every problem or situation encountered. Other reasons could be work or lack of it as well as the availability of money. Too much work may cause the partners to drift apart; lack of money could be interpreted as lack of love. Rarely, marriages end up after a few weeks and months. The reason in this case could be that psychologically the spouse may feel emotionally trapped and wants to come out at any price.

The birth of the first child is the moment where marriages go through a very tough time. The wife may be left depressed with loss of sexual feelings, while the husband may feel marginalised and out of the mother and baby unit. The couple do not understand what has hit them and the emotional and social havoc can wreck marriages.

Second stage: the next ten to fifteen years. Here alcohol and drug addiction play a very important role, together to a lesser extent gambling. The severe personality disorders such as psychopaths and paranoid personalities head the list. Then there is the growth from dependence on the spouse to complete independence and the realisation that the spouse is actually of no use any longer. Another reason for separation at this stage in marriage is adultery. Usually, to put it in a nut shell, men have extramarital sex for erotic reasons, while women for unfulfilled emotional ones. Besides adultery can be a one night stand or an affair that can last from a few weeks to months or years until finally the spouse leaves the marital house and joins his lover. It is important to realise that where adultery is present, usually both spouses have contributed to such a situation.

Third stage: the following years until the death of a spouse. Usually at this stage the reason for separation of a couple is when a limit is reached to marital violence, paranoia, psychopathy, sexual philandering, excessive alcohol consumption and a late emotional growth. There is a new specific cause for this stage in marriage which is impotence in the man which increases with age starting from the age of 50. Often at this stage in marriage the children leave the family and the spouses have drifted so far apart that they find nothing else in common.

Cana Movement's Role in the Sustenance of Marriage

The Cana Movement for the past 50 years has been working hard to be a support to families while they go through their milestones. The pastoral care offered can be classified as follows:

- Formative
- Therapeutic
- Marriage enrichment

Formative Care

This kind of care can be considered as preventive and educational. Cana Movement offers marriage preparation courses which are ideally followed a few years before the marriage date. These are done in small groups led by married couples who have formerly been trained by Cana Movement. During these courses made up of 8 sessions, various topics are discussed, such as handling conflict, family planning, the gift of sexuality, and so on. The

sessions are based on discussions, sharing of experiences and exercises. As a follow-up to this course, the engaged couples can join support groups called *Belong*, which continue to help in their marriage preparation. It is also important to note that another group for couples exists that is called *Going Steady*. These are groups which help couples when they have just decided to take their relationship seriously.

Cana Movement also has another teaching course about Natural Family Planning. Couples are taught how to understand their reproductive system and how to live in harmony with it. The couples are made to understand how they can use their own cycle to plan their family, and enjoy their sexual life in harmony with their own cycle.

Another teaching course is about Parental skills, where parents are taught basic skills about how to educate their children in a constructive way. Finally Cana Movement issues a monthly magazine called '*Familja Kana*' which tackles different issues and topics regarding family life.

Therapeutic Services

The Cana Couple Counselling Service Unit is committed to providing a counselling service with a Christian perspective whereby the counsellors accompany the clients in their journey towards the fulfilment of their life as individuals and as members of the families and of healthy communities. This service provides counselling mainly to engaged and married couples.

There are then a number of support groups that help families and their members in difficult moments of their life. SANDS (Still-born And Neo-natal Death Society), supports parents whose baby was still-born or died soon after childbirth. TIPS (Tiny Infants Parents' Support) supports parents who have a premature baby. WAW (Wanting And Waiting), supports infertile couples. ABC (Association of Breastfeeding Counsellors) promotes breastfeeding and gives support to mothers who are breastfeeding their children. Separated Persons supports separated persons to help them face their problems and adapt themselves to their new situation. Group 85 is a self-help group for lonely people and helps to enable them make new friends. Finally the latest addition to the support groups is one for single mothers, which was launched recently.

Marriage Enrichment

Grufan is the name given to Christian Family Groups which is an organisation of groups of married couples who meet regularly to have spiritual and social formation through prayers, reflection on the bible and the church's documents and study their marriage and family in the light of these reflections. Together they decide on what action they should take to ameliorate or help their family as also other families. Grufan also organises Marriage Encounters which are weekends for married couples to enable them to renew and refresh their marriage.

The Mother and Baby Club helps mothers find the support they need to face the difficulties they encounter in the early years of their offspring. They organise various educational and social events so that mothers can bring along with them their young children.

Challenges to the Church's Position

The Church's position nowadays is not accepted as relevant by some people and is very clearly challenged from many quarters. There are those who believe that marriage can be with two people of the same sex and there are others who believe that marriage can end before death separates the couple. The Church while respecting the dignity of those who have a homosexual orientation does not approve their conduct and behaviour. The Church cannot approve same-sex marriage and any similar attempt to regard gay partnerships as equal in value to marriage for they go against the plan of the Creator. Above all, marriage was not invented by men but by the Creator himself with the creation of men.

Furthermore, the Church knows and accepts that there are certain reasons that can lead the couple to separate, like domestic violence and infidelity, but it cannot accept divorce. This position goes diametrically against the aims of marriage where one gives oneself totally and forever to the other party. According to *'Familiaris Consortio'*, chapter 20, the matrimonial communion is characterised not only for its unity but also for its indissolubility. Unfortunately, divorce is legalized and practiced in a number of so called "Christian countries". While the Church cannot accept divorce she still teaches that those members of hers who are divorced and remarried should know that the Church loves them and she suffers with them because of their situation. The divorced and remarried are and remain her members, because they have received Baptism and retain their Christian faith.

Another issue which is gradually spreading all over the world is that nowadays we are witnessing lack of respect for the dignity and sanctity of life. People are imbued with the current 'culture of death' and are involved in widespread use of contraceptives and they are also resorting many a time to abortion. The Church holds that life is to be respected from the very first moment of conception till its natural death. No one has any right over life because it is a property and gift from God, the Creator and father of all humanity. Abortion is always the killing of innocent people. In addition, scientific research should be for the service of life and not to the detriment of life. Science is not an absolute and it too should be subjected to ethical rules. The Church is in full solidarity with those couples who cannot have children and strongly recommends the proper use of Natural Family Planning and the possibility of adoption and fostering. In this way they will give a great witness to humanity of their great generosity and dedication towards children.

Contribution to Society

Civil authorities must recognize that the family is the first cell of society and that "the well-being of the individual person and of human and Christian society is intimately linked with the healthy condition of that community produced by marriage and family" (GS 47). The state has the mission to defend and promote the value of the family. We can never replace the family, even though we think that other people or institutions can replace it. People in positions of political, civil or religious authority must courageously defend the family for in

doing so they will greatly contribute towards the sane and healthy development of people and also for the well-being of society itself. Without the family, society will take a turn for the worse.

Conclusion

The family can be considered as a common patrimony, a treasure that belongs to all humanity and hence everyone has to defend it. It can also be seen as social capital.

The Cana Movement continues to play a leading part in civil society in promoting and defending wholeheartedly this common patrimony whatever it costs it. Cana offers its services, its time and its energy free of charge, completely as a voluntary service moved solely by its love for the family. Cana Movement is ready to join forces with all those who have at heart the family to strengthen and enrich this social capital - which is the greatest good we have all received.

“FASHIONING” THE MALTESE FAMILY

ADRIAN GRIMA

Literature does not provide a mirror of society and does not pretend to do so either. But it does allow writers to explore the individuals and the community they choose to write about and their work often provides insights one would associate with qualitative research. Literature is essentially a “fashioning of language,” a “kind of aesthetic ‘forming’ [...] or ‘shaping’”. The genre of fiction in particular is “characterised by a more overtly referential modality in purporting to relate to ‘real life,’” and this is because it “seems to form or shape the raw material of lived experience into the ‘world of the book.’”¹ Art fashions “a perceptible reality for us in its textual ‘shaping’ of the inchoate into comprehensible designs or patterns.”²

On the other hand, literary theorists debunk the myth that there is a clear distinction between reality and narrative; they remind us “that our comprehension of the world is constructed within discourse; that we are all formed by, and complicit in, ‘telling stories;’ that our systems of knowing, meaning and making sense are all textualised narratives.” “The literary” does not allude to a “real” material reality outside itself, because “*even at its most realistic the literary discourse nevertheless constructs the reality it purports to represent.*”³ Peter Widdowson argues that a central point in literature’s generic self-definition as being “of the literary” is that works of literature “self-consciously” disclose themselves as being literary; even the most “real-world” allusive of novels or short stories, like Immanuel Mifsud’s *Kimika* or Paul P. Borg’s *Beżgħat*, present themselves as “based on” or “inspired by” “real-world” incidents or events but not as the “real-world” itself.

Widdowson argues that “the most important feature of literary ‘making’ [...] is that it creates ‘poietic realities’ which would not otherwise exist;” it brings into view “newly perceptible ‘subjects’” from what Henry James, in his preface to *The Spoils of Poynton*, has called the “‘splendid waste’ of life”. Writers interpret and evaluate; their work reflects what they perceive and value in the “real-world.” In *The Long Revolution*, Raymond Williams writes about “art’s ability to extrapolate a ‘sense of subject’ from the undifferentiated ‘inclusion and confusion’ of life.” The perception of “pattern” allows us to “tap into the ‘structure of feeling’ of a period, and experience ‘the particular living result of all the elements in the general organisation’ of a community: that is, its ‘culture.’”⁴ Williams argues that through

¹ Peter Widdowson, *Literature* (London: Routledge, 1999) 102.

² Widdowson 102-103.

³ Widdowson 103.

⁴ Widdowson 104.

new perceptions and responses, art “creates” elements which society is not able to realise. This access is by way of fictional *fashioning*, that is forms and devices, “which produces new knowledge by ‘shaping’ a ‘pattern’ which ‘consciousness’ perceives ‘for the first time in this way’.” Therefore the literary “forms out of nothing,” “it makes for the first time new perceptual realities in its creative textuality.” Using Williams’ reading of George Eliot, Widdowson argues that the author extends the community of the novel, not so much by increasing its “real social range,” but by articulating it so that “the known community, *creatively known*” is perceived to be the “divided” relationship between the “real social” community and the ‘knowing’ of it by the novelist’s “signifying consciousness”: a consciousness “not of the known or the knowable but of the to-be-known.”⁵

This complex idea of literature, and fiction in particular, allows us to acknowledge the “ambiguous relations between the ‘real’ and the ‘fictive’,”⁶ their dependence upon, and independence from, one another, and to send simplistic notions of literature as either mirroring or falsifying reality to the Recycle Bin. But even if contemporary Maltese literature provides us with interesting perspectives on the realities of the Maltese family of the 21st century, one has to consider the influence that this new literature has on Maltese people and their perception of the family on the Maltese Islands. How does contemporary Maltese literature shape, if at all, our concept of the changing Maltese family? In terms of numbers, a leading contemporary Maltese writer from the new generation would probably sell something in the region of a thousand copies of his collections of short stories - and here I’m referring specifically to *L-Istejjer Strambi ta’ Sara Sue Sammut* and *Kimika*, two books that received “unprecedented” media attention; unless the publisher tells us, it is practically impossible to know exactly how many books have been sold. But one must also consider the wider impact of the writers and their work on the media and fellow writers, to mention just two influential mind-forming groups. If these works are then read and studied in schools, as was the case with Paul P. Borg’s short story collection *Bezghat* which often deals with the family, they reach a whole generation of youngsters. In concrete terms it is impossible to gauge the influence of these contemporary texts, but one should not underestimate it. Contemporary Maltese writers are receiving more and more attention abroad and if that is any indication of their potential influence on a reading public that is often drawn to writers whose work has been acknowledged abroad, then these contemporary works certainly deserve the attention of social scientists as well as literary critics. For while sociological books allow the general public the possibility to have a closer look at the general trends in the Maltese public, literature gives people the possibility to delve into the social, psychological and emotional conflicts that we all, in varying ways, face.

Contemporary writers have the potential to provide new perspectives on Maltese lives, to explore voices and experiences that have been largely ignored throughout the rather linear development of Maltese literature that told a romantic, often *nationalistic* story of Malta and the Maltese up until Independence and only started taking stock of what was happening in the larger world with the arrival of the post-Independence, generally postcolonial poets of the so-called “modern” period. Many stories that do not conform to the romantic model of the Maltese Catholic, heterosexual, white, Malta-based family have yet to be told not only

⁵ Widdowson 105.

⁶ Widdowson 103.

by our writers but also by politicians and public officials, academics, mind-forming media personalities and by the Catholic Church.

A Cleavage Between Beliefs and Praxis

The stylized Maltese nuclear family constructed by Dun Karm and other romantic poets and novelists has survived the social and cultural changes brought about by World War II and Independence. Even those post-Independence writers like Paul P. Borg, who “rewrote” the Maltese family in their poems, short stories and novels, have not really undermined the basic model but they have questioned our certainties about it. In *Bezghat*, a collection of short stories that many pre-University students and undergraduates today seem to find particularly insightful, Borg makes us question our cosy certainties about the “purity” and “peacefulness” of the Maltese family, but he does not question the composition of that family. If anything, the stories take the model of the idealized nuclear family for granted: the patriarchal father solidly at the helm; the dedicated but ultimately submissive mother tied very much to the home (she is the family’s “unsung hero” and its “moral pillar”); and lively but ultimately submissive children who adopt the value system they receive from their parents, their community and the conservative Maltese Catholic Church, including the code of honour and shame. A very recent study seems to confirm this position. In his preface to Saviour Rizzo’s analysis of the *The Dual Worker Family in Malta* (2006), Edward L. Zammit notes that the “traditional, sharp demarcation between gender roles, particularly within the family,” is still widely held in Malta. Males are the main bread winners and females are the main family carers. “Any divergence from these stereotypes is generally seen as peripheral, transitory and undesirable.”⁷

The difficulties that characters in mainly post-Independence Maltese literature encounter derive precisely from the fact that they are not able, or sometimes willing, to live up to the expectations established by *the* model. In Oliver Friggieri’s *Il-Gidba* (1977), Natan and Anna’s marriage breaks up and no amount of pressure applied by the Church and the community can bring the couple back together; however the community does manage to abort the relationship between Natan and his new partner Rebekka by informing the young woman’s mother of her daughter’s misbehaviour and allowing her to do the rest. Like other female characters in a Maltese literature dominated by male writers, Rebekka gives in to the pressure almost immediately and leaves Natan, even though her honour and that of her family has been tarnished forever.

These and other works of Maltese post-Independence literature reflect the process of secularisation within Maltese society that started after World War II and gathered pace after Independence in 1964. The Maltese-Australian writer and academic Lou Drogenik notes that in her interviews with Maltese women held in 1998,⁸ she found that “there was a cleavage between beliefs and praxis.” There had been “a definite change in Maltese people’s attitudes

⁷ Saviour Rizzo, *The Dual Worker Family in Malta* (Malta: Centre for Labour Studies, University of Malta and Friedrich Ebert Stiftung, 2006) 3.

⁸ Lou Drogenik, “The Filo Pastry of Identity - Lifting the Many Layers of Maltese Cultural Identity.” Paper read at a seminar on Maltese Australians at Victoria University, Australia, on 6 September 2005. This research originally appeared in her unpublished PhD thesis: Ludgarde Drogenik, “The Effects of Maltese Cultural Identity on a Group of Maltese Women” (Bundoora, Australia: La Trobe University, 2000).

towards the issues of illegitimacy, birth control and marriage separation though only one respondent was critical of the Church's unchanging stand against them." The younger women she interviewed did not question or criticise the teachings that were "*diametrically opposite* to their practices" (my emphasis). For example, none of the young women she spoke to criticize the Church on its stand against contraception, "even though they stated that their friends used some form or other of limiting their families." Neither did they criticize its stand on sex outside marriage, even though they spoke freely about their friends' sexual practices and teenage pregnancies on the island. Drofenik writes that "individualism, consumerism and secularisation have opened new vistas for young Maltese living in Malta today and unlike their predecessors they are able to sample other value systems and listen to other voices."⁹

The Idealized Home of the Romantics and the Nation-as-Family

Dun Karm's poem "Kewkbet is-Safar" (1933) ("The Pole Star") deals with the plight of those who sail the seas and the role of the Pole Star, or the Mother watching over these brave men. The poet pleads specifically for the safety of the man who has left his land to earn a living for his family; Dun Karm asks the star to guide him back home. As in other poems, the journey in "Kewkbet is-Safar" is, in a sense, a non-journey, a refusal to distance oneself from one's "*oikos*," one's home or point of reference. Dun Karm brings out the precariousness of the voyage at sea, as he does in two of his masterpieces, "Il-Ġerrejja u Jien" (1933) ("The Prifter and I") and "Żagħżuġh ta' Dejjem" (1933) ("Eternal Youth"): The dangers of the voyage at sea are set against the warmth and unity of the home dominated by the conventional image of the rural family gathered at table, as in "Ġunju" (1914) ("June"), or the idealized unit consisting of the father, mother and son in his intense sonnet "Univers Ieħor" (1930) ("Another World").

Dun Karm sees the traditional, God-loving family of poems like "Ġunju" and "Lid-Dielja" (1913) ("To the Vine"), both as a synecdoche and metaphor of his ideal Malta. There are interesting similarities between this early twentieth century vision for Malta, still present in post-Independence romantic writers like Pawlu Aquilina, and the beliefs of the Christian Right in the United States at the beginning of the twenty-first century who want to reclaim America as a "national small town" for "people like us." George Lakoff describes what he calls the Strict Father Model as a traditional nuclear family with the father having primary responsibility for the well-being of the household. The mother has day-to-day responsibility for the care of the house and details of raising the children. "But the father has primary responsibility for setting overall family policy, and the mother's job is to be supportive of the father and to help carry out the father's views on what should be done. Ideally, she respects his views and supports them."¹⁰ Linda Kintz uncovers the networks of "familiarity" and "structures of resonance," "that move minds by moving hearts, that turn bigotry into a perfect expression of God's love." In her introductory chapter, Kintz figures her structure of resonance as "a set of concentric circles stacked one on top of the other and ascending heavenward: God, property, womb, family, church, free market, nation, global mission, God." What keeps "the circles from sliding off their neat stack" is the "symbolic figuration

⁹ Drofenik, "The Filo Pastry of Identity."

¹⁰ George Lakoff, "Metaphor, Morality, and Politics, Or, Why Conservatives Have Left Liberals In the Dust," 1995. <http://www.wvcd.org/issues/Lakoff.html>

of the proper woman” and her activism on behalf of a gender purity - for its own sake, and for politics. In other words, the religious Right believes in the traditional, heterosexual family with the mutually exclusive roles of the woman as mother and the man as father.

The traditional family of Maltese literature is essentially a closed Christian unit with well-defined roles assigned to the members of the in-groups, whether or not they like it, and with a clear theocentric point of reference. It would be misleading to continue to perceive this traditional unit as the locus of some political utopia: like all figures, the identification of Malta with the traditional discourse of mother-family-home presupposes an identifiable ideological standpoint. The maternal figure that Malta is identified with is the mother who sacrifices herself for her children and nurtures them all the way to adulthood, but the social and political rules she teaches them are laid down by the colonial master and by the powerful, male-dominated Catholic Church. These are not *her* rules, these are the rules that society expects her to teach her children. The mother is subservient to the father and is expected to support and carry out his decisions; in many novels she seeks to influence the final decision taken by her husband, but she also seems to find comfort in the fact that she does not have to be the one to shoulder the responsibility of that decision that will necessarily bind all.

The nation-as-mother metaphor of Maltese pre-Independence literature hides the deeper nation-as-family metaphor with the Catholic Church (and the colonial rulers) playing the role of the strict father. It has been argued that Dom Mintoff, arguably Malta’s most influential post-war political leader and the ideal consort of the traditionally submissive nation-mother, behaved like the traditional Maltese father: he was “aloof, manly, harsh and looked after his own.”¹¹ Boissevain argues that this authoritarian figure was familiar to all Maltese, because most of them had grown up in and formed part of families dominated by such a figure. This familiarity of the Mintoff model may explain, at least in part, his ability to influence the political, social and cultural life of the Maltese Islands for half a century. Mintoff, the nation’s father substituting, perhaps, the foreign or ecclesiastical paternal figures, is described as hard-working and often “harsh, even cruel, verbally lashing and battering, punishing where he encountered opposition or incompetence.” Like many traditional fathers he was both respected and feared; “above all he was firm, rarely admitting error [and] consulting with few.” Of course he could also be “immensely charming and hospitable” and “radiated an aura of confidence, of knowing exactly what he wanted and what he was doing.” Another aspect of his personality that Boissevain brings out is his *machismo*, his reputation for being tough, an important characteristic of the image of Mediterranean men. There are many similarities between Mintoff and his archrival, Archbishop Mikiel Gonzi: they were two strict father figures destined to clash in the same way that like poles repel one another.

Like the respected priest Dun Karm in Ġużè Ellul Mercer’s novel, *Leli ta’ Ħaż-Żgħir* (Leli of Ħaż-Żgħir) (1938), the ideal conservative father “embodies the values needed to make one’s way in the world and to support a family: he is morally strong, self-disciplined, frugal, temperate, and restrained.” He sets an example by “holding himself to high standards,” as Dun Karm does when he answers his priest friend’s call to assist the soldiers on the frontline

¹¹ Jeremy Boissevain, “A Politician and His Audience: Malta’s Dom Mintoff,” *Maltese Society: A Sociological Inquiry*, ed. Ronald Sultana and Godfrey Baldacchino (Malta: Mireva, 1994) 411.

during the First World War in Belgium. “He insists on his moral authority, commands obedience, and when he does not get it, metes out retribution as fairly and justly as he knows how. It is his job to protect and support his family,” which in the case of Dun Karm is his village community, “and he believes that safety comes out of strength.”¹² Despite the respect she enjoys, the idealized conservative mother, Sa Marjann in Ellul Mercer’s novel, cannot bring about any real change in the role of women in society because she is expected to conform to the patriarchal culture that she supports and that supports her.

In the Nation-as-Family metaphor, the nation is seen as a family, the government as a parent and the citizens as children. George Lakoff explains that “this metaphor turns family-based morality into political morality, providing the link between conservative family values and conservative political policies.” The Strict Father model, he writes, “which brings together the conservative metaphors for morality, is what unites the various conservative political positions into a coherent whole when it is imposed on political life by the Nation-as-Family metaphor.” In post-Independence Maltese poetry, Daniel Massa’s “Monologu mill-Gżira ta’ l-Ispinoż,” Victor Fenech’s prose poem “Samuraj,” and Henry Holland’s “Is-Salvatur,” deal with the “mythical” figure of Dom Mintoff, the “Saviour” or “samurai.” Massa’s poem depicts Mintoff (the unnamed protagonist of his poem and model of all authoritarian leaders) as the typical national strict father figure whose primary duty, in addition to support and protection, is to tell his children what is right and wrong, to punish them when they do wrong, and to bring them up to be self-disciplined and self-reliant. In this way, strict father teaches his children to be “self-disciplined, industrious, polite, trustworthy, and respectful of authority.” Like the priest Dun Karm in Ellul Mercer’s *Leli ta’ Haż-Żghir*, he “provides nurturance and expresses his devotion to his family by supporting and protecting them, but just as importantly by setting and enforcing strict moral bounds and by inculcating self-discipline and self-reliance through hard work and self-denial. This, according to the model, “builds character.” For the strict father, strictness is a form of nurturance and love - tough love;” he himself is “restrained in showing affection and emotion overtly, and prefers the appearance of strength and calm. He donates to charitable causes as an expression of compassion for those less fortunate than he and as an expression of gratitude for his own good fortune.” Once his children are grown - once they have become self-disciplined and self-reliant - they are on their own and must succeed or fail by themselves; he does not meddle in their lives, just as he does not want any external authority meddling in his life.¹³

Questioning the Model: Domestic Violence and the Voice of Women

In traditional Maltese society, the individual, especially the woman, normally acquires her identity from her group. The Maltese-Australian writer and academic Lou Drogenik recently referred to the significance of her family ties and how they give her an identity in Malta when she was speaking about Maltese cultural identity at a seminar on Maltese Australians in 2005. Dr. Drogenik explained that when she visits Malta today, 45 years after having emigrated to Australia, people from Birkirkara, where she was brought up, are able to identify her family’s social position from the family nickname of her father and mother; “they pinpoint the street and the house where my family lived, name the network of my

¹² “Metaphor, Morality, and Politics, Or, Why Conservatives Have Left Liberals In the Dust,” by George Lakoff, 1995. <http://www.wvcd.org/issues/Lakoff.html>

¹³ George Lakoff, “Metaphor, Morality, and Politics.”

relatives, know their occupations and would be able to recall some misdemeanour by one of my family members or would be able to relate some piece of my family's history. My identity as a member of a collective," writes Lou Drogenik, formerly Zammit, "was strong, and I can still call upon this form of identification whenever I return to the island after many years in Australia for it is still held within the memory of those who knew my family."¹⁴

Post-Independence Maltese literature has questioned not only the idealization of the traditional Maltese family of most pre-Independence Maltese literature, with its religious beliefs and affiliations, but also the identification of the individual with the group. The stories it narrates reflect the changes that have been taking place in an increasingly secularised Maltese society and that are finally being recognized. In J. J. Camilleri's novel *Il-Għar tax-Xitan* (1973), Jumi Ħarr and Petriga, who have had to move to the more liberal city (presumably abroad) in order to escape the stifling, asphyxiating bigotry of the village of San Rokku (the village, named after St. Roque, the patron saint of victims of the plague, and more recently AIDS, is a metaphor for Malta) dominated by an overpowering Church, live together for a year, during which Petriga gets pregnant, before they decide to get married. Petriga tells Jumi Ħarr that although they are not married she is already his wife; but she prefers to get married because she does not want her child to suffer the way she herself suffered; she does not want their child to be "without a name and illegitimate."¹⁵ And ironically, the couple decide to return to the village that was bent on destroying their lives to get married there, a return that can be read as an attempt on their part to normalize their status in the eyes of their estranged community and return within its fold.

As Lou Drogenik pointed out after she read an earlier draft of this paper, this return can also be read as their inability to cope outside the confines of a rigid and moralistic community which rendered them in a state of childlike dependence. "I have interviewed migrant women who are still suffering from great depression because they were cut off from their community," writes Lou Drogenik, "a community which in Malta had spelt out exactly what moral choices they had to make." In Australia they had to make moral choices without the community's strictures and rigid guidelines and therefore they themselves had to shoulder the responsibility of their decisions and live with the consequences of their choices.¹⁶ In her doctoral dissertation, Drogenik noted that some women, "yearned for the reconnection to the remembered moral community where there was direction and thereby they felt safe and secure."¹⁷ The migrant women's feelings of grief for the loss and disconnection from the moral community to which they had belonged are still felt after three decades of migration. "The customs, traditions and actions of a past collective 'we' are constantly referred to when speaking about the present. Their past Maltese community is viewed with nostalgia; its actions are romanticized and valued. Its safety and caring aspects are compared with contemporary Australian community which is seen to be immoral and dangerous." Drogenik's research concluded that the inability of some of these migrant women to disengage themselves from the past to take up the moral values of the new collective, has

¹⁴ Drogenik, "The Filo Pastry of Identity."

¹⁵ J. J. Camilleri, *Il-Għar tax-Xitan*, 2nd edn. (Malta: Klabb Kotba Maltin [1973] 1982) 111.

¹⁶ Personal communication via email dated 3 March 2006.

¹⁷ Drogenik, "The Effects of Migration on a Group of Maltese Women," 264.

led to what she calls “a lifelong sense of mourning for the losses they incurred in their adolescent years”.¹⁸

Like Natan of *Il-Gidba* and Petriga of *Il-Għar tax-Xitan*, Samwel, the protagonist of Frans Sammut’s novel *Samuraj* (1975) has had a very difficult childhood. His father, like many paternal figures in Maltese literature, is violent and insensitive towards his wife and his son, and Samwel’s aloofness and low self esteem in his adult life is a direct result of the dysfunctional family in which he was brought up, his unresolved oedipal complex, and the absence of his mother, who has since died, and towards whom he feels guilty for not having been able to protect her. This unfinished business cripples his relationship with a young woman in her twenties that is considered scandalous by the tightly knit community of their traditional rural village. When she walks away from the violence of her father and her mother’s intrusions into her life and moves in with the as yet unprepared Samwel, the village community, dominated by the Catholic Church, decides it is time to intervene and Samwel loses both Żabbett and what was left of his self-esteem and his desire to live.

The institution of the Church emerges as a powerful force that suffocates the individual because it uses its moral authority and extensive resources to control the community. In *Samuraj* the Church is not really interested in people’s lives and loves, in their griefs and beliefs; all it seems to want is to guarantee and consolidate its privileged and domineering position by, among other things, supporting the patriarchal *status quo* and enforcing obedience to the “accepted” norms of behaviour. It does not seem to have intervened in support of Samwel and his mother when they were being physically and psychologically battered by an unrestrained macho. But when it comes to dealing with Samwel and Żabbett, the Church ignores what their relationship means to them and, like their repressive fathers, demands nothing but unconditional obedience.

In general, Maltese men and the Church, as shown by a pastoral letter written by the bishops of the Maltese Islands in 2000,¹⁹ have retained a traditional view of the role of women in society. Younger generations and women with a higher standard of education, however, do not adhere to this view. In a study published in 2000, sociologist Anthony M. Abela concluded that although the Maltese still value marriage and the family very highly, when their expectations are not fulfilled, they are not as reluctant as in the past to resort to separation and annulment. Violence and unfaithfulness are the two main factors leading to marital break-up.²⁰ Generally speaking, young people and women believe that both women and men should have equal opportunity to participate in the labour market, and equally to share financial and child-rearing duties. The author observes, however, that relative to their European counterparts, the Maltese have a traditional outlook on family issues.²¹ In 2001, Abela pointed out that “until recently,” Malta has been an “outlier on the map of European values, identified as a ‘fortress-convent’ for its strict non-permissive morality. Malta is fast

¹⁸ Drofenik, “The Effects of Migration on a Group of Maltese Women,” 267.

¹⁹ “Women in the life of the church.” Pastoral letter by the Archbishop of Malta and the bishop of Gozo on the occasion of the feast of the assumption 2000. Archdiocese of Malta - Press Release 2000/127e (12th August 2000). Full text published in *The Sunday Times* on August 13, 2000.

²⁰ Anthony M. Abela, *Values of Women and Men in the Maltese Islands, a comparative European perspective* (Valletta: Commission for the Advancement of Women, Ministry for Social Policy, 2000).

²¹ “Shifting Maltese Values” by Josann Cutajar (*The Sunday Times*, March 18, 2001).

changing into a modern Mediterranean and European city-island. He noted a shift from the values of the family and traditional morality to individualized values and lifestyles.²²

Towards the end of Clare Azzopardi's "Rasi ġo l-Ilma" ("Immersed"),²³ Gordon visits his estranged, violent father Djego Grech who is being treated for terminal cancer at a specialized hospital. He refuses to pass on his father's message to his mother that her husband would like to see her before he dies. It is not clear why he chooses to visit his father in hospital and yet deny him this last wish, even because his mother is a strong woman, the only person Djego was ever afraid of (we are told) - a person who is perfectly capable of taking care of herself and making her own decisions. Gordon decides to shield her from the despicable man she once married: it is probably his way of doing something for the mother he has set as his role model. The story ends with Gordon observing his mother who has finally found the love she deserves. She is not the weakling the widow Pawlina turns out to be in Ġużè Diacono's important play *L-Ewwel Jien!* (1963). Unlike the great majority of female characters in Maltese literature, many of Clare Azzopardi's protagonists are strong women who have a mind of their own and refuse to be patronized by others. "/No adjective describe story/," for example, deals with a whole range of issues, from racism and human trafficking in Malta to the age-old issue of language and its ability, or inability, to express, or perhaps intimate, the inexpressible; but it also about young assertive women coming to terms with themselves as independent beings, and sometimes choosing, like Marisa, an assertive police inspector and cultured mother. and perhaps her friend Ruth, the narrator, to do away with men.

"/No adjective describe story/" explores the relationships that some of the female characters have with their families. The young Eritrean female asylum seeker Adiam arrives in Malta as a clandestine immigrant with her sister and brother and ends up locked in a detention centre for over a year. Eventually, Adiam, her sister and other asylum seekers are smuggled to Pozzallo in Sicily by a trafficker called Ġorg, the father of Rachel, Adiam's best friend in Malta. In her letter from Italy at the very end of the story, the only instance in which we have unmediated access to her words, Adiam speaks almost triumphantly of her arrival in Italy and the reunification of what's left of her family - it is mostly a letter about family: she and her sister Sania have joined her brother who lives in Italy and now has a child. Sania is told that her husband has died. Their parents, like their other, desperate brother who committed suicide while in detention, are dead.

Rachel's relationship with her violent father is turbulent and occasionally one of convenience. When she decides to leave Malta to join her mother in Manchester she takes nothing with her: "I'm not even carrying any luggage with me. Just a handbag. 'S all I need, like."²⁴ There's no talk of trying to reunite her family or anything of the sort, because it is completely irrelevant to her in the same way that it is irrelevant and undesirable to Gordon

²² Anthony M. Abela, *Youth Participation in Voluntary Organisations in Malta: A comparative analysis of European Values Studies* (Malta: Parliamentary Secretariat, Ministry of Education, 2001) 80.

²³ "Rasi ġo l-Ilma" by Clare Azzopardi translated by Albert Gatt as "Immersed." Clare Azzopardi's collection of short stories will be published in July 2006. Translations of her work have appeared in printed and online publications abroad. "Immersed" appears in Clare Azzopardi, *Others, Across*, trans. Albert Gatt (Malta: Inizjamed, Midsea, 2005).

²⁴ "/No adjective describe story/" in Clare Azzopardi, *Others, Across*, trans. Albert Gatt (Malta: Inizjamed, Midsea, 2005), 27.

in “Immersed;” all she wants is to get away from her father and the bad influence she knows he has on her despite the fact that she despises him.

The little that Ruth (the narrator) tells us about Marisa, her best friend from their days at school, is just about enough to grab our attention. Marisa is the unmarried mother of a little boy, but there is none of the soppy self-pity or “paternalism” that normally accompanies such characters. Marisa is six foot three and “weighs in at 75.” Ruth tells us, with more than a hint of admiration, that “Marisa does not give a damn about anything,” and that she probably “undertakes her work with a strong sense of duty - I mean both as a mother and as a police inspector.” Ruth proudly states that she loves Marisa to bits. “Maybe that’s just because we’ve known each other for so long. Maybe it is because she likes French cinema. Or maybe it is because she’s capable of taking the piss out of any man, which scares them shitless every time.”²⁵

Like other women in Maltese literature, especially in that written after Independence, the protagonist in Immanuel Mifsud’s powerful short story “Sonia,” inspired by a case reported in the papers a few years ago about a young woman recovering from a drug addiction who died after an overdose and was dumped in the sea by her boyfriend,²⁶ leaves home because she cannot accept her father’s patriarchal attitude and violent nature and the way both her parents decide about her life without letting her participate in any way in their design; but she runs away to another man, who is the product of the same patriarchal culture, because she is incapable of conceiving her relationship with the world outside the terms of this particular culture. Although she has the strength to escape from her childhood home, Sonia is mentally and culturally ill-equipped to consider other solutions to the problems that have been imposed on her by her abusive parents and all she can think of is to set up an “alternative” family dominated by the same oppressive “culture” that she is escaping from and that eventually leads to her psychological and physical death. Sonia runs away into the arms of the same abusive male-dominated culture that has ruined her adolescence.

Sonia lacks the moral and intellectual strength that allows Clare Azzopardi’s women to seek paths that are true alternatives to the patriarchy that oppresses them. “/No adjective describe story/” is also characterized by dialogue, real dialogue, between the female characters, because as Patricia Hill Collins points out, one must not confuse dialogue with adversarial debate.²⁷ Dialogue, writes Angelo Marchese, is a discourse that focuses on the speaker as interlocutor, as someone who takes active part in a conversation; there are many references to the locutionary situation. Dialogue is active on a number of reference planes simultaneously; it is characterized by the presence of metalinguistic elements and by the frequent use of interrogative forms.”²⁸ And this is precisely what happens in the various

²⁵ Azzopardi, “/No adjective describe story/,” 36-37.

²⁶ Immanuel Mifsud, *Kimika* (Malta: Klabb Kotba Maltin, 2005). In an interview with Gillian Bartolo (“Immanuel Mifsud and His Controversial Book *Kimika*, *The Malta Independent on Sunday*, 19.2.2006), Mifsud explains that the setting in the short story “Sonia” “is based on a bar in Valletta that I used to frequent, populated by unemployed Arabs or ones illegally employed, around whom hovered Maltese prostitutes. I never spoke to the people there. I simply observed them.”

²⁷ Patricia Hill Collins, “Toward an Afrocentric Feminist Epistemology,” (198-206), in *Feminisms*, eds. Sandra Kemp and Judith Squires (Oxford: Oxford UP, 1997) 203.

²⁸ Angelo Marchese, *Dizionario di retorica e di stilistica* (Milan: Arnoldo Mondadori, 1991) 79. “[...] *il dialogo come un discorso che: mette l’accento sul parlante come interlocutore; si riferisce abbondantemente alla situazione*

exchanges in Azzopardi's account. In six out of the nine parts into which the short story is divided, there is explicit use of dialogue between the various female characters who tell, and want to be the protagonists of, their own story. And the various dialogues are riddled with questions, meaningful ones not rhetorical devices. There are also instances in which Ruth, the narrator, addresses the reader; and one must also say that Adiam's strings of words are clearly addressed to someone who is listening carefully: within the diegesis it would probably be Ruth, because she is the one who is relaying them to herself through her own, highly subjective memory - but possibly also Rachel. Nevertheless, Adiam's words are addressed to us too, because Azzopardi wants her to tell her own story, even if she has to do it in her absence, through a trusted mediator. This, after all, is a characteristic of most clandestine migrants, and similarly of many female characters in Maltese fiction: their reluctance stroke fear stroke inability stroke desire to tell their own story.

Many of the women of *Birds of Passage* (2005) - the novel by the Maltese-Australian writer Lou Drofenik which is so much about (different conceptions of the) family and which was inspired by research carried out by the author among Maltese and Gozitan migrant women in Australia - have a mind of their own and their life does not dissolve into that of their male companion, or father, or family. Much of the novel is narrated by a heterodiegetic narrator, a narrator who is not a character in the story but hovers above it and knows everything about it. But there are also many individual, first-person voices, both in letters and in sections in which a character tells her or his own story. Cecilja says that she was born and raised in the (fictional) Maltese village of Mintafuq "but, as luck would have it, I escaped its confines, its strictures and its people. Who, tell me, would want to spend all the years of their life in the same house where they were born without experiencing other spaces, other people, other lives?"²⁹ When she was fifteen Victor Grima started paying court to her: "I need to have a life," she told him. "I wanted to see, to hear, to experience."³⁰ In another scene she tells her sisters: "[...] how good it is to be free, to be answerable to no one but myself."³¹ Her twin brother Paul warns her that "When a woman marries she becomes a slave. You'll be a slave to a man."³² He himself was dying to leave Malta, and they eventually reunite in Australia where the unmarried Cecilja runs a boarding house in Port Melbourne³³ while he marries an Englishwoman, Virginia Talbot Smith, the liberated mother of two children, who left her husband and the Navy he lived for back in Malta. When they were younger, Cecilja used to tell her brother, with a "heart full of jealousy": "You'll be a man and you can do whatever you want."³⁴ But she was able to appropriate her own story too; and her brother clearly did not enjoy the role/s assigned to him by Maltese society either and their reunion in Australia is a triumph for both of them.

Like Nada in Rena Balzan's novel *Ilkoll ta' Nisel Wieħed* (1987), Cecilja's niece Susanna fights her way out of the unnecessary constraints imposed on her by her family and she

locutoria; gioca su più quadri di referenza simultaneamente; si caratterizza per la presenza di elementi metalinguistici e per la frequenza delle forme interrogative."

²⁹ Lou Drofenik, *Birds of Passage* (Victoria, Australia: L. Drofenik, 2005) 186.

³⁰ Drofenik, *Birds of Passage*, 188.

³¹ Drofenik, *Birds of Passage*, 162.

³² Drofenik, *Birds of Passage*, 188.

³³ Drofenik, *Birds of Passage*, 363.

³⁴ In another passage, Fina Grima tells herself that men "always get the best deal in life." Drofenik, *Birds of Passage*, 98.

learns from her own mistakes what kind of life she wants to lead and how she can go about becoming the person she wants to be. When she finally meets the Australian former First World War soldier Jack MacDonald again (she had had a love relationship with him in Malta), this time in Australia, far from the asphyxiating Maltese society “back home,” she chooses to marry him, even though he is divorced and her community in Malta would never agree to such a union.³⁵ These are the limitations she left behind when she chose to travel to Australia to look for her lover, despite the opposition of her family which is compounded, without her knowing, by the opposition of Jack’s Australian mother. The difference between Nada and Susanna is that Nada, who admires her rigid, paternalistic grandfather partly because he has treated her differently than the way he has treated his wife and daughter, returns to her country of birth after she has finished her studies and she seems to be unaware of the irreparable harm that his attitude and behaviour have caused his wife and his daughter Erica, Nada’s mother. Nada does not fight against the patriarchal society that turns Lou Drogenik’s Cecilja, Paul and Susanna away from Malta. Their lives are reconstructed in Australia, where they create their new centre, their new family, while Nada’s return to Malta is a return to the centre which she does not find particularly oppressive. Her mother Erica rebelled against her father and ran away to another country, but like Immanuel Mifsud’s Sonia she constantly looks for the security of another male figure and her failure to find that male companion means that for her, her entire life is a failure: she seems to be unable to live her life outside the framework of a (protective, paternalistic) relationship with a man. Rena Balzan herself states that “Erica always let her life be led by the men she loved,”³⁶ even though she was perhaps unaware of this dependence. Nada, on the other hand, has more of a grip on her own life, and the very fact that she narrates her own story is an indication of her determination to take her life in the direction that she chooses to follow. This is certainly the Nada that Rena Balzan wants us to see, a self-confident, assertive and independent woman. She is an “improvement” on her mother, so to speak.

Another important difference between Nada and Drogenik’s Maltese-Australians is the fact that although she comes across as more of a thinker than they are, her thoughts about women (and family) are not particularly feminist. She tells Claud, the other half in a rather improbable “love” affair, that for the emancipation of women to take place, men must first emancipate themselves because they have the leading role in society.³⁷ Neither Susanna and Cecilja, nor Virginia are ready to wait for those who effectively oppress them to “come to”: they simply decide, for a number of reasons, to get away from the oppressive patriarchy that suffocates them, even if it is their mothers who represent that patriarchy in their everyday lives. Even Paul cannot wait to get away from the closed society that has been portrayed so powerfully by Maltese fiction. Nada, unlike her brave but unprepared mother, has been allowed enough space to be able to do her own thing without having to confront the patriarchy head on. Susanna takes on the patriarchy from a safe distance: Australia has allowed her the space that she could never carve out for herself in Malta. Distancing herself from Malta she is liberated, and her liberation, like that of Ceska, presumably liberates her daughters (and sons).

³⁵ Drogenik, *Birds of Passage*, 364.

³⁶ Intervista ta’ Adrian Grima ma’ Rena Balzan (Marzu 2003).

http://adriangrima.250free.com/rena_balzan_intervista.htm u *Il-Ġensillum*.

³⁷ Rena Balzan, *Ilkoll ta’ Nisel Wiehed* (Malta: PEG, 1998) 89: “Biex issehh l-emanċipazzjoni tal-mara,” Nada tells Claud, “l-ewwel trid titwettaq l-emanċipazzjoni tar-raġel għax hu qiegħed f’ras is-soċjetà.”

The women's brave decision to leave the protection of their island home and emigrate to Australia is vindicated by the success of their daughters and their daughters' daughters. The three trapped women who dominate the first part of the novel, Katerina Zerafa in Gozo, and Fina Grima and Virginia Talbot Smith in Malta, become brave and determined birds of passage that are vindicated by Angela Spiteri. Like Nada she takes the opportunity to reconstruct the story of her family. But Angela is also able to *reconstruct* her story in another, highly symbolic way: unlike her grandmother Ceska and her lover Luigi, she can start a relationship with a young man, whose great uncle was Luigi, in whichever way she likes. And when she tells Ceska that she has decided to go out with him, Ceska is clearly supportive, even though, or perhaps *precisely* because the tragedy of her own life was brought about by the violent interference of her parents in her life. Like Aisha in Leila Abouzeid's novel *The Last Chapter* (2000, translation published in 2003), who can choose to ignore the patriarchal maxim that "A woman's kingdom is her home" and that women are nothing without their men,³⁸ Angela is her own boss.

Family features prominently in Clare Azzopardi's "Il-Linja l-Ħadra," ("The Green Line"),³⁹ in which a journey on the Underground in London between Stepney Green and London Victoria serves as a frame for the protagonist's recollections about her relationship with individual members of her family, two of whom - her brother, who is sick with cancer, and her sister, who has broken up with the first boyfriend she had after the failure of her three-year marriage - she is travelling with: every stop marks the beginning of short "flashes" of memory about specific moments in the life of their family. But her brother and sister cannot, or simply refuse to, remember the often difficult moments she refers to and we are not quite sure whether the protagonist is making some or even all of it up; however, despite the protagonist's own psychological troubles, we suspect that the sister and brother, who make it clear right from the start that they have come to London to *be* tourists, have chosen to forget because they do not want to think of the bleaker sides of their family story. Nicola King notes that family secrets highlight "the centrality of memory to our experience of plots and lives - our own and those of others, real or imagined;"⁴⁰ Like a number of stories by Paul P. Borg, such as especially "Milied man-Nannu" (1973) ("Christmas with Grandpa"),⁴¹ and Trevor Żahra, such as "Is-Sigra taż-Żebbuġ" ("The Olive Tree"),⁴² "Il-Linja l-Ħadra" is all about remembering, in the sense of reconstructing (childhood) and trying to come to terms with the bleaker sides that every family inevitably has. Mario Azzopardi looks at childhood and a difficult family story with an unsettling mix of nostalgia and bitterness in his poem "Demgħat tas-Silġ" ("Tears of Ice"). "My people never knew me/neither my father/nor my mother/no my brothers know me."⁴³ His is one of the poems that marks a

³⁸ Leila Abouzeid, *The Last Chapter*, trans. by Leila Abouzeid and John Liechety (Cairo: American University in Cairo Press, 2003) 133.

³⁹ Clare Azzopardi, "The Green Line," translated by Albert Gatt, in *Cúirt 21. The Cúirt Annual 2006*, ed. by Alan Hayes and Maura Kennedy (Galway, Ireland: Arlen House, 2006).

⁴⁰ Nicola King, *Memory, Narrative, Identity. Remembering the Self* (Edinburgh: Edinburgh UP, 2000) 8.

⁴¹ Paul P. Borg, *Beżgħat* (Malta: Bugelli, 1986). This was Borg's first collection of short stories written between 1973-1981.

⁴² Trevor Żahra, *Lubien* (Malta: Merlin Library, 1996).

⁴³ "Demgħat tas-Silġ" appeared in Mario Azzopardi's poetry collection *Demgħat tas-Silġ* (1976). The English version, "Tears of Ice," is from Mario Azzopardi, *Naked as Water*, trans. Grazio Falzon (Riverside, California: Xenos Books, 1996) 144.

clean break from the idealized family of the romantics and ushers in a much-needed rethinking of the story of the Maltese family that had been left largely untold.

New Stories, New Perspectives

The family institution is still deeply rooted and closely knit in Maltese society. It is important to acknowledge the fact that the family of origin is “the main source of help” for those who are sick or under stress, and to a lesser extent for those with mental health problems, financial difficulties, long-term illnesses, physical disabilities or alcohol abuse problems.⁴⁴ Anthropologist Jeremy Boissevain has observed that in the fifty years that he has known Malta, the family is one of those things that has not changed. It is still “the paramount point of reference and people still pride themselves on the strength of the family” and loyalty to the family is a “fundamental and cherished value.” But Boissevain also argues that this leads to what some have called “amoral familism,” although “many would call it a highly moral form of behaviour.” Most Maltese hold that any action undertaken to benefit one’s family is justifiable, and that other people behave similarly; this set of values is widespread in Malta and in southern Europe and leads to “a disregard of the effects on others of your action to further the interests of your family - on neighbours, strangers, and future generations.” Family and party loyalty feed another characteristic of Maltese life, “the endemic patronage, clientelism, nepotism and the real and imagined network of friends-of-friends that can be mobilized to solve the problems of daily life.” Boissevain observes that another reality linked to the family that is still present, though weaker than it was, is “the fear of reprisal, retribution for family, party or government. This blanket of fear rests heavily on the shoulders of so many. It inhibits persons from standing up and disagreeing, or even just questioning someone more influential or powerful.”⁴⁵ These social and political aspects of family life on the Maltese Islands receive particular attention in post-Independence Maltese literature, especially, but not exclusively among the new writers of Sixties.

But there is more to the changing Maltese family of the late 20th and early 21st than has been narrated so far and writers of the new generation are starting to tackle issues such as gay and lesbian relationships, and also relationships and families in which one of the partners is non-Maltese, or even non-Catholic or non-white. Writers that provide new perspectives and explore new experiences allow us to understand our society better, especially if they choose to stand outside, or even refuse, the logic and privileges of the patriarchy and its cosy stereotypes. These unorthodox characters and narratives are bound to raise eyebrows and provoke eloquent silences: in Clare Azzopardi’s “Il-Linja l-Ħadra,” the protagonist tells us

⁴⁴ Joseph M. Sammut, “Malta: Low participation of women in the formal economy,” *Social Watch Report 2005. Roars and Whispers. Gender and Poverty: Promises vs. Action*, ed. Roberto Bissio (Montevideo, Uruguay: Instituto del Tercer Mundo, 2005) 207.

⁴⁵ Jeremy Boissevain, “Malta: Taking Stock after fifty years. Where to Now?” Speech made on 26 March 2006 at the Today seminar organised by Mediatoday, at Palazzo Capua in Sliema, Malta.
<http://www.maltatoday.com.mt/2006/03/26/speech.html>

that her embarrassed mother denies that her daughter's aunt is a lesbian and lives with her partner.

Moreover, with a few exceptions, Maltese literature has as yet failed to “tell” the stories of “real” Maltese women. This is a serious lacuna, because as Widdowson argues, it is the vision of the writer, “articulated in and as the text, which defamiliarises habitualised sight, and so allows us to ‘know’ a community which is unable to know itself as it gets on busily with living the ‘splendid waste’ of its ‘real social’ life.”⁴⁶ Women in Malta still lag behind in gender empowerment and economic participation. The 32% that are economically active are mainly involved in “traditionally female jobs.” Women are also “poorly represented in the power structure,”⁴⁷ but much of our literature that deals with the family reproduces the mutually exclusive roles of the woman as (nurturing) mother and the man as (absent) father. Mary Darmanin writes about the benefits both for the workers themselves and for their families, including the men, when women and mothers have a job outside the house, and she urges the Church hierarchy to listen to what women have to say about their role in the family and in society.⁴⁸

Fundamental changes to discourse about the family in Maltese literature can both reflect what is happening in everyday Maltese life and construct and articulate relatively new realities. In particular, the emergence of women writers who refuse to perpetuate the patriarchal culture on which much of Maltese literature has stood and propose a literature and a discourse about literature that explores other value systems, perspectives and experiences, would have a very positive effect on literature in Malta. This can in turn help Maltese society to bridge the gap between beliefs and praxis, between what society says it believes in and what it actually tries to achieve in its daily life.

⁴⁶ Widdowson 105.

⁴⁷ Sammut 206.

⁴⁸ Mary Darmanin, “Talba Biex Jinftiehem Aħjar il-Bżonnijiet tan-Nisa Maltin,” *Orbis*, Vol.3/4, Dec. 04.

**BACK TO THE
WIDER PICTURE**

HUMAN EMBRYONIC STEM CELL RESEARCH: ETHICAL ISSUES AND CULTURAL PLURALISM

AUDREY GATT

Human Embryo Research

Developments in science and research have shown that human embryonic stem cells have enormous potential for adding to our knowledge of and relieving suffering from serious human diseases of which the cure is yet unknown such as Parkinson's, Alzheimer's, stroke and chronic heart failure. Yet the use of human embryo research is highly controversial and raises complex ethical issues.

These problems pose a significant challenge to EU Member States individually, but also and especially to the EU as a whole due to an underlying conflict. On the one hand there are those who believe that the EU shares not only a common market, but also a set of shared fundamental values which need to be articulated with respect to embryo research and must be the basis of a binding EU legislation. On the other hand there are those who emphasise the principle of subsidiarity and argue that unified EU regulations can only be set up if they draw on constitutional traditions already prevalent in Member States. Therefore due to differences in the constitutions of Member States the matter of embryo research has been left to the individual Member States to be regulated at national level in accordance with respective moral, legal and political traditions, legitimated by local democratic discourse.¹

The issue of human embryo research revolves around the debate regarding the moment at which life begins. Unfortunately this issue may not be resolved by reference to objective criteria, but rather it is a function of personal belief and ethical arguments. This paper will analyse this issue by reference to religious ethics primarily Christianity, Islam and Judaism. A closer look at attitudes adopted towards abortion and *in vitro* fertilisation (IVF) may help foresee some of the ethical difficulties that may arise in the field of embryo stem cell research.

¹ European Parliament Directorate General for Research, 'Harmonisation of EU Member States legislation concerning embryo research' Briefing Note No 12/2000.

Embryo Destruction

All persons start out as an embryo, the first stage in a continuum of human development that, if left unmolested, will grow to be an adult. The destruction of the embryo breaks this continuum and thus destroys a human life. In the Instruction *Donum Vitae*, issued by the Vatican's Congregation for the Doctrine of the Faith (C.D.F.) in 1987, it was held that:

*'The human being is to be respected and treated as a person from the moment of conception; and therefore from the same moment his rights as a person must be recognised, among which in the first place is the inviolable right of every innocent being to life.'*²

The implication of this view of the foetus for Catholic teaching on abortion has long been clear. Abortion is an abominable crime. In *Donum Vitae*, however, the C.D.F. draws out the implications of this view of the foetus for embryo research as well. 'No objective' the C.D.F. writes, 'can in any way justify experimentation on living human embryos or foetuses, whether viable or not, either inside or outside the mother's womb'. Experimentation on the human embryo will be discussed in further detail at a later stage.

The quote above has been the consistent response of the Catholic Church to every new development in reproductive technology that involves manipulating early embryos. Whether the issue is *in vitro* fertilisation or embryo freezing, pre-implantation genetic diagnosis or embryonic stem cell research, they are all considered wrong because all typically involve the destruction of a living person.

As a general rule, abortion in Judaism is permitted only if there is a direct threat to the life of the mother by carrying the foetus to term or through the act of childbirth. In such circumstance, the baby is considered tantamount to a *rodef*, a pursuer after the mother with the intent to kill her. Generally, one may not deliberately harm a foetus, and sanctions are placed upon those who purposefully cause a woman to miscarry. However, when its life comes into direct conflict with an already born person, the autonomous person's life takes precedence. Judaism recognises psychiatric as well as physical factors in evaluating the potential threat that the foetus poses to the mother. However, the danger posed by the foetus must be both probable and substantial to justify abortion. As a rule, *halacha*³ does not assign relative values to different lives. Therefore, abortion in cases of abnormalities or deformities found in a foetus, are forbidden. It is interesting to note that both the person who performs the abortion as well as the woman who voluntarily allows it to be done is culpable.

The Islamic view is based on the very high priority the faith gives to the sanctity of life.⁴ According to the teachings of the Prophet, human life begins at the moment of fertilisation, therefore no one has the right to terminate life at this stage. After 120 days it is believed that the foetus is given a soul. Yet Islam allows abortion in certain instances mainly in cases of

² While the hierarchy of the Catholic Church has left open the resolution of the actual time of ensoulment, it has in fact insisted that the prudent response would be to recognize that as a practical matter ensoulment is coincident with fertilization.

³ Jewish law.

⁴ Surat al-Ma'aida 5:32.

rape, pregnancy resulting from a sexual relationship with one's own father or with a mad person or in cases where the foetus has no brain or similar extreme cases. In any of the above exceptions abortion after the 120 days have elapsed is strictly prohibited.

In the Light of the Above Differences What Position has the EU Adopted on Embryo Destruction?

The European Union has been unable to enforce abortion before the European Court of Justice (ECJ) since it does not fall within its competence. It has however been able to exert some influence through its policies. On the other hand the European Court of Human Rights (ECHR) has been ready to uphold abortion laws already present in the legal systems of European countries. Though the ECHR has never defined the moment at which human life begins it has been cautious not to attribute the right to life to the unborn foetus.

Abortion-related issues have been primarily addressed by the Court through Article 2, the right to life; Article 8, the right to a private and family life; and Article 10, the right to freedom of expression. The Court's and the Commission's jurisprudence clearly establish that the foetus does not enjoy an absolute right to life under Article 2(1). The position of the Court may be summarised in the following way:

*'The life of the foetus is intimately connected with, and it cannot be regarded in isolation of, the life of the pregnant woman. If Article 2 were to cover the foetus and its protection under this Article were, in the absence of any express limitation, seen as an absolute, an abortion would have to be considered as prohibited even where the continuance of the pregnancy would involve a serious risk to the life of the pregnant woman. This would mean that the 'unborn life' of the foetus would be regarded as being of a higher value than the life of the pregnant woman.'*⁵

This case is important in that the Court seems to accept the fact that where a choice needs to be made between the foetus and the mother's life, the life of the mother takes precedence over that of the foetus. The issue as to whether the foetus has a right to life was not discussed in this judgment; however, it was established that the mother's right to life takes precedence over that of the foetus. The Court could have explicitly held that the foetus has a right to life but suffers an exception when the right to life of the mother is at stake. Instead the ECHR chose to avoid this issue mainly due to the fact that such a statement would have had serious consequences on the abortion laws of Member States.

Is In Vitro Fertilisation Permitted?

Infertility is a growing problem and to this problem there has been a corresponding growth in a 'reproductive technologies industry' to provide a solution. One reproductive technology which has been developed to overcome infertility is *in vitro* fertilisation.

Unfortunately IVF has profound moral implications. IVF raises issues about procreation and parenthood, but it also raises concerns about society's attitudes to the lives of those embryonic human beings it creates. While in principle every embryo conceived in the

⁵ *Paton v United Kingdom*, App. No. 8416/78, 3 Eur. H.R. Rep. 4 08 para. 19 (1980) (Eur. Commission H.R.).

laboratory could be transferred to its mother, in practice of the many conceived only a proportion are given the chance to life. Through this process several eggs are fertilised *in vitro* however only a few are implanted in the woman's womb. The extra embryos are either destroyed, discarded or used for research purposes.⁶

The Catholic faith propounds that any number of morally acceptable interventions may be used to overcome infertility. For example, surgery can overcome tubal blockages in the male or female reproductive system which prevent fertilisation from taking place. Fertility drugs may also be used, with the caution that large multiple pregnancies may put mother and infants at risk. There are also many ways of tracking natural reproductive rhythms to enhance the chances of achieving pregnancy. IVF is not considered an option, the reason being that embryos are considered to be human life that is being destroyed in the process.

Nowadays, most rabbis agree that the commandment to populate the world is so important that many modern technological developments for assisting infertile couples may be permitted by Jewish law. They hold that in case natural reproduction does not succeed, it gives a tacit approval for assisted reproduction. The challenge of assisted reproductive technologies is to determine where to draw the line in terms of what techniques are ethical and permissible. For example 'donor' egg or sperm are not accepted due to problems and doubts created as to the lineage of the child. This is a common position in Islam and Catholicism.

Under Islamic law the pursuit of pregnancy is legitimate and individuals may resort to the necessary means provided they do not violate the Shari'a. Artificial insemination is permissible only if the sperm belongs to the husband. Donor's semen may not be used since procreation is legitimate only within the marriage contract and the elements that are party to it. In-vitro fertilization is Islamically acceptable as long as it is between husband and wife, that is, within the boundaries of the marriage contract. Therefore a woman may not be impregnated by the sperm of her ex-husband kept in deep freeze in a semen bank.

Are Pre-Embryos Included in the Abortion Prohibition or Otherwise?

In our age, the microscope has enabled science advancement and the exploration of the genetic map hence the definition of human being and more crucially the question as to when life begins? On August 9, 2001, President Bush announced his decision to allow the federal government to provide funding for research on 64 lines of embryonic stem cells.⁷ These lines came from destroyed human embryos obtained from *in vitro* fertilisation clinics. The president's decision which was later reiterated caused enormous debate in terms of both science and ethics.

Stem cell research that requires the destruction of human embryos is incompatible with Catholic moral principles, and with any ethic that gives serious weight to the moral status of

⁶ Human embryonic stem cells (HESC) may provide the basis for more accurate medical intervention.

⁷ Castle-DeGette Bill (H.R. 810).

the embryo. In line with these arguments research conducted on the clinical products that are derived from human embryonic tissue is contrary to Catholic teaching.

There are some who believe that because there are promising and morally acceptable alternative approaches to the repair and regeneration of human tissues, and because treatments that rely on destruction of human embryos would be morally offensive to many patients, embryonic stem cell research may play a far less significant role in medical progress than proponents believe.⁸

Genetic materials outside the uterus have no legal status in Jewish law, for they are not even a part of a human being until implanted in a woman's womb and even then, during the first 40 days of gestation, their status is 'as if they were simply water'. As a result, frozen embryos may be discarded or used for reasonable purposes, and so may stem cells procured from them.

Rabbis encourage that embryos produced during an IVF procedure are used by the original couple to establish future pregnancies. The destruction of the extra embryos is *halachically* permissible if this is done by letting them thaw out or die on their own. On the other hand the use of extra embryos for research is an active process and results ultimately in their destruction, and this is not generally acceptable to Orthodox rabbis. Due to the fact that parentage is considered of vital concern to Jews the donation of extra embryos or donation of sperm or egg to another couple is generally condemned.

Despite the above, the Union of Orthodox Jewish Congregations, one of the most important Jewish organisations in America, had circulated a letter in support of the Castle-DeGette bill (H.R. 810), legislation that would provide federal funding for research using embryos created initially for reproductive purposes but left-over in fertility clinics. The letter stated the following:

'The Jewish tradition places great value upon human life and its preservation. The Torah commands us to treat and cure the ill and to defeat disease wherever possible; to do this is to be the Creator's partner in safeguarding the created. The traditional Jewish perspective thus emphasises that the potential to save and heal human lives is an integral part of valuing human life. Moreover, the traditional Jewish perspective does not accord an embryo outside of the womb the full status of humanhood and its attendant protection. Thus, stem cell research may be consistent with and serve these moral and noble goals; however, such research must not be pursued indiscriminately.'

The latter statement was harshly criticised by Jews themselves. Eric Cohen⁹ in his article 'Unorthodox Endorsement Judaism and Embryonic Stem Cell Research', claims that on the stem-cell question, the conscience of Judaism has been misguided. Jews seem to have forgotten even the minimal liberal wisdom of tolerance - the wisdom of not trampling on the moral opinions of their fellow citizens, like pro-life Christians, who believe embryo destruction is not only evil, but the gravest evil.

⁸ Richard M. Doerflinger, *The Ethics of Funding Embryonic Stem Cell Research: A Catholic Viewpoint*, Kennedy Institute of Ethics Journal Vol. 9 Issue 2 June 1999.

⁹ Resident Scholar at the *Ethics and Public Policy Center*.

The Shari'ah,¹⁰ makes a distinction between actual life and potential life. A distinction is also made between the fertilised ovum in the dish and the fertilised ovum in the womb of its mother. An embryo is considered valuable because it has the potential to grow into a human being, but it is not yet a human being. A big difference exists in having something in a test tube or dish or something in the body of a human being. Therefore destroying such embryos is not called and cannot be called an abortion. This is a departure from the Catholic position. An embryo at this stage is not in its natural environment, the womb. If it is not placed in the womb it will not survive and it will not become a human being. Therefore research on stem cells recovered from embryos is encouraged if research has the potential of curing diseases.

Despite disagreement amongst the above mentioned religious position as to when human life begins, a thing is certain, the blastocyst contrary to other group of cells has a special ontological and biological formation. It has the potential to become a human being. This is undisputed knowledge and therefore no matter what position one adopts the blastocyst

*'...deserves our respect not because it has rights or claims to sentience, but because of what it is, now and prospectively.'*¹¹

Therefore keeping the latter in mind and considering the above differences, the need of regulation in Europe on abortion, IVF and embryonic stem cells research, whether state or regional, becomes more urgent. In such a scenario the religious ethics mentioned above must be given their due importance since the religious traditions have time and time again influenced the public policy debate.

How Far are These Religious Values Entrenched in Europe?

Once again reference to the ECHR has to be made and in particular to sexual and reproductive issues since case law on these issues tackles the fundamental question of whether an embryo should be considered a human being with rights as from the moment of fertilisation. It is important to note that the ECHR has played an important role in safeguarding reproductive rights where national constitutions have failed to recognise them or give them adequate protection where they have been raised against popular beliefs.

In a case that could have undermined abortion rights across Europe, the European Court of Human Rights refused to treat an unborn foetus as a person under the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Court upheld a 1999 decision by France's highest court in the case of *Vo v. France*.¹² The Center for Reproductive Rights filed an *amicus* brief with the Court, arguing that granting a foetus the right to life would allow legal claims that favor the rights of a foetus over those of a pregnant woman. The Center emphasised that the loss of a wanted pregnancy is an injury to the pregnant woman and accordingly, the Court could recognise a violation of her rights, rather than those of the foetus. The facts of the case were as follows. In 1991, a French doctor negligently ruptured the amniotic sac of Thi-Nho Vo, a 36-year-old woman who was

¹⁰ Religious law of Muslims.

¹¹ Leon Kass; http://www.law.duke.edu/features/news_kass.html.

¹² *Vo v. France*, No. 53924/00, para. 19 (Eur. Ct. H.R. July 8, 2004).

five months pregnant. The doctor had mistaken her for another patient seeking the removal of a contraceptive coil. His negligence forced an emergency abortion and Vo's loss of her foetus.

The French Court of Cassation ruled that the doctor could not be charged with unintentional homicide because the unborn foetus was not considered a person entitled to protection under France's criminal code. Vo then took the case to the European Court, arguing that the European Convention on Human Rights guarantees all persons the right to life, and that this guarantee applies to foetuses.

The European Court refused to extend the right to life to unborn foetuses. It reasoned, 'firstly, that the issue of such protection has not been resolved within the majority of the Contracting States themselves...and, secondly, that there is no European consensus on the scientific and legal definition of the beginning of life.' The Court further noted that 'the life of the foetus was intimately connected with that of the mother and could be protected through her.'

Had the Court decided otherwise, abortion laws in thirty-nine countries across Europe would have been rendered invalid. This was an important decision because by refusing to extend the right to life to the unborn foetus it has indirectly laid the groundwork for future regulation on human embryonic stem cell research.

Another important contribution of the ECHR to human embryonic stem cell research debates, is its controversial decisions on the right to religious conscientious objection. In *Evangelium Vitae* (no. 27), Pope John Paul II exhorted Christians to become conscientious objectors to laws that claim to legitimise abortion and euthanasia:

'Christians, like all people of good will, are called upon under grave obligation of conscience not to cooperate formally in practices which, even if permitted by civil legislation, are contrary to God's law. Indeed, from the moral standpoint, it is never licit to cooperate formally in evil'. (no.74).

Relying on Article 14 of the European Convention on Human Rights (ECHR) in combination with Article 9 of the same instrument, the European Court of Human Rights has recognised that where practices based on religious beliefs enter into conflict with certain legally imposed obligations, a State may have to provide the possibility of certain exemptions, the absence of which may lead to a form of indirect discrimination.¹³ This judgment is of particular relevance to the Maltese scenario which will be discussed further on.

The right to religious conscientious objection is currently the subject of a case pending before the European Court of Human Rights.¹⁴ The applicant in the case is a Polish woman who is severely visually impaired and was denied an abortion to protect her physical health. Upon becoming pregnant in 2000, the applicant consulted her doctors about the possible impact of the delivery on her eyesight. Numerous doctors all concluded that the pregnancy

¹³ Eur. Ct. HR, *Thlimmenos v. Greece* judgment of 6 April 2000 (Application No 34369/97).

¹⁴ *Alicja Tysiac v. the Polish Government* (ECHR) 7th February 2006. Application No. 5410/03.

and delivery posed a serious health risk, but ultimately refused to issue a certificate for the pregnancy to be terminated. After finally obtaining a certificate authorising the abortion, the applicant went to a public hospital in Warsaw to have the procedure, only to have her request refused again. At this point, the applicant had no choice but to carry her pregnancy to term. As predicted, after the delivery, the applicant's eyesight badly deteriorated due to hemorrhages in her retina. Corrective surgery is not possible in her case, and she currently faces a serious risk of blindness.

The Center for Reproductive Rights held that:

'... The establishment of an appeals or review process in countries across Europe reflects a common understanding of the need to protect women's right to legal abortion in situations where a health-care provider denies such a request, including in cases where a woman's health is at risk.'

The Center also argues that states undertaking to permit abortion in prescribed circumstances, as Poland has in cases of physical health risk to the woman, have obligations to ensure that the guarantee to abortion in their national laws is an effective right in practice. Poland's failure to take such steps has not only deprived Polish women of their entitlement to a reproductive health service afforded under their national law, but threatened their well-being and basic rights to privacy, dignity, life, health, and nondiscrimination under international law.

The above judgments have all been extremely significant as they seem to imply that the right to reproductive choice is so important as to override religious conscientious objections and the right to life of the foetus. The ECHR has so far played an important role by enforcing already existing rights and has made sure that in countries where laws protecting women's reproductive rights are in place these are enforced. Notwithstanding the protection afforded by the ECHR a problem still subsists. The ECHR is not a legislative body and therefore where reproductive choice and the rights that pertain to it are not legislated upon, women are not afforded equal rights as those of neighbouring countries. Malta is a case in point.

The judgments reviewed above clearly show that the ECHR has not resolved the problem as to when the right to life begins but has pronounced on the status of the human embryo. By doing so it has paved the way for a European ethic on this issue.

Malta's Approach

Reproductive and sexual rights embrace human rights already recognised in international human rights documents and other consensus documents.¹⁵ Yet, Malta still awaits a national sexual and reproductive health policy although this has been on Government's agenda for a long number of years. Political and religious impediments to access the necessary range of reproductive options present one of the most serious health problems facing women and

¹⁵ The consensus documents from the International Conference on Population and Development meeting held in Cairo in 1994 and another document from the United Nations Fourth World Conference on Women (Beijing) a year later, affirmed the centrality of these rights to international human rights.

men in Malta today.¹⁶ The main reason Malta lags behind is due to conservative views on the status of the embryo and a general lack of discussion by all stakeholders on the issue.

Last year a proposal to enshrine anti-abortion laws in the Constitution, presented to the government by the anti-choice movement, won cabinet approval, and the government sent a ministerial letter seeking civil society support. This created an uproar in the country since it was a clear message from the government that it was attempting to bar any discussion on the matter. Maltese members of the European Parliament appear to be in disagreement on the issue. In 2005 the European People's Party called on the EU Parliament to substitute the controversial paragraph 47¹⁷ with a more generic call on the EU to 'maintain levels of funding for a broad range of sexual and reproductive health services' which would obviously include abortion. Nationalist MEPs¹⁸ voted against this amendment while Labour MEPs joined the EPP in voting for this amendment. None of the Labour MEPs¹⁹ voted in favour of a motion to delete entirely the controversial paragraph 47 which urges the EU 'to continue to lead the way on sexual and reproductive health rights by maintaining levels of funding for the full range of sexual and reproductive health services, including family planning, the treatment of sexually transmitted diseases and safe abortion services where legal'.

There has also been an attempt to limit in-vitro fertilisation and other artificial reproductive techniques solely to married couples. Dr. Pierre Mallia, the president of the Malta College of Family Doctors, held that

*'If Parliament passes a law limiting the use of reproductive technologies only to married couples, I would be the first one to break such a law since it would go against the Hippocratic Oath I took as a doctor, which precludes me from offering medical assistance on a discriminatory basis.'*²⁰

Since Malta has no divorce legislation, separated individuals have no choice but to cohabit and many doctors appear to feel that declining medical treatment for infertility to such couples would be an injustice.

The above issues have been on the Government's agenda for years and still in 2006 there exists no law in Malta to regulate ethically charged issues such as in-vitro fertilisation, genetic profiling of embryos prior to implantation, sperm and ovum donation, stem cell research and other aspects of this medical branch. The main issue at stake, which holds back further legislative development, is the definition of the moment at which life begins, which in Malta has always been defined in terms of the Roman Catholic position. Catholic leaders in Malta criticised a document by a UN committee urging Malta to consider allowing

¹⁶ Dr Frances Camilleri-Cassar; 'Sexual and Reproductive Health and Rights in Malta', Commonwealth People's Forum, 21 November 2005.

¹⁷ European Commission; The EU's position going into the 2005 World Summit; Workshop on MDGs in a post 2005 World Summit.

¹⁸ Simon Busuttil and David Casa.

¹⁹ Joseph Muscat, John Attard Montalto and Louis Grech.

²⁰ Kurt Sansone; 'Doctor opposes limiting in-vitro fertilization to married couples', Malta Today 27 February 2005.

abortions in cases of rape or incest or to protect the health of the mother. In a statement, the bishops called the recommendation ‘objectionable’ and ‘unacceptable’ and urged Malta residents to continue protecting the right to life of unborn children from the moment of conception;

‘Abortion is and remains the murder of innocent persons, whatever the reason behind it,’ the bishops said, according to a report by Malta news agency di-ve. ‘Abortion is fully contrary to the law of God. It is a grave affront to God, who has absolute authority over human life.’

Careful consideration must be given to the enactment of reproductive rights in Malta. Invoking the right of religious conscientious objection would not always be accepted by the ECHR. In fact the ECHR has shown itself to be intolerant where this right is invoked in a country where the law is in place. A case in point is the *Pichon and Sajous v. France*²¹. In this case a pharmacist refused to fill prescriptions for contraceptive pills because of his religious beliefs. The Court ruled that Article 9, right to freedom of religion, was not violated when the pharmacists were convicted under the consumer code for refusing to sell contraceptive pills. The Court supported the French Court’s decision that ethical or religious principles are not legitimate grounds for refusing to sell contraceptives; as long as the sale of contraceptives is *legal* and medical prescriptions cannot be filled anywhere other than a pharmacy, the applicants cannot give precedence to their religious beliefs and impose them on others. The applicants are free to manifest their beliefs in many ways outside the professional sphere.

The Court’s language in this case is very strong, and could potentially be used to support a challenge regarding a refusal of a hospital or medical provider who has invoked conscientious objection to deny a woman an abortion, especially in cases involving the refusal to refer a patient to another health-care provider that does supply those services.

The language of the ECHR in the above case clearly shows that it does not interfere in the enactment of national laws but merely safeguards that the national laws already in place are enforced in accordance with the European Convention of Human Rights. Therefore, before Malta legalises abortion, *in vitro* fertilisation and stem cell research the ECHR may not interfere in such issues. However, were abortion to be legalised, the issue of conscientious objection might be difficult to invoke unless options were given to the person invoking his or her right such as an alternative medical centre. This might exclude the possibility of ever invoking the right to religious objection due to the fact that Malta is predominantly Catholic and health services are becoming more and more centralised. The possibility of offering alternatives when invoking the right to religious objection might be few or none at all. This however is not enough reason to bar discussion in the country and have a policy in place. The United Nations Human Rights Committee²² have placed Malta and other pro-life nations on a ‘hit list’ of countries that would be subjected to intense lobbying to alter their abortion statutes.²³ In the light of the latter, serious discussions are now needed in this

²¹ App. No. 49853/99, Eur. Court HR (2001).

²² Malta has a representative on this UN committee.

²³ Malta is one of just six countries around the world to prohibit all abortions.

country. The EU has also taken up this sensitive issue due to technological improvement in the field of stem cell research and Malta might soon be called to vote on legislation or policies regulating the matter. Therefore such issue may no longer be ignored. Malta needs to have a position on this issue ideally through a direct democratic process such as a referendum.

What is important to emphasise when dealing with such sensitive issues is the fact that where there are rights, there are responsibilities. The ethic of responsibility should therefore guide all our efforts in the application and exercise of these rights.

Europe's Way Forward

Life sciences and biotechnology are widely recognised to be, after information technology, the next wave of the knowledge-based economy, creating new opportunities for our societies and economies.²⁴ In the European Community, like in other regions and countries, the scientific and technological progress in these areas raise difficult policy issues and complex regulatory challenges. A European law on stem cell research could impact the way Europeans conceive of human life and its purpose.

The growing public concern about scientific progress can only be met through a rational assessment of the benefits and risks of new knowledge and new technology and through an open and structured debate on its scientific, economic, social and ethical dimensions. It is crucial that the discussions on stem cell research and use now involve all stakeholders, including the general public and policy-makers.

In order to create a framework for decision-making it is important to keep in mind the views that exist on the matter. The analysis above shows the different religious views which, though they should be kept distinct from any political agenda in democratic countries based on the rule of law, necessarily bear their influence on decision makers and policy setters. The parameters of this issue can be articulated as follows. For conservative thinkers the embryo is a human being from the moment of conception, worthy of all the rights and protection afforded to human beings. At the other end of the spectrum is the view that the embryo is just a 'thing'. It does not satisfy the conditions necessary for person-hood so it should not be afforded any more respect than any other human material. Between extremes is the view that the potential for personhood requires increasing protection. The latter position has implications for public policy and requires the clear definition of levels of protection to be adopted for embryos used in research.²⁵

Although it may be fanciful to believe that one common regulatory scheme could be implemented across the EU Member States, there is no doubt that it will be possible to draw important lessons by studying the developments in the different countries and highlighting 'good' and 'bad' practice with regard to regulation.

²⁴ Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions; *Life Sciences and Biotechnology - A Strategy for Europe* [COM(2002)27 final].

²⁵ 'Advanced Workshop on Embryo Research' Club de la Fondation Universitaire, Bruxelles, Belgium 14-16 September 2001.

While respecting cultural pluralism, there is a need to identify areas of consensus in order to establish a common legal framework to be recognised across Europe that should accompany, guide and regulate these developments in order to ensure responsible progress. Some first steps towards this harmonisation of regulatory requirements should begin at the procedural level, which includes collection, archives, distribution and processing of human stem cells.

This technology is at an early stage of development and presents an opportunity to develop harmonised guidelines that are recognised across Europe to accompany, guide and regulate these developments.²⁶ It also presents an opportunity to involve society at large in the decision-making process. This approach will be essential to ensure a responsible introduction of stem cell therapy.

The Community, competent on important policy aspects of relevance, has taken up the challenge to address these issues. The European Council in Stockholm in March 2001 confirmed this and invited the Commission together with the Council *'to examine measures required to utilise the full potential of biotechnology and strengthen the European biotechnology sector's competitiveness in order to match leading competitors while ensuring that those developments occur in a manner which is healthy and safe for consumers and the environment, and consistent with common fundamental values and ethical principles.'*

Issues such as stem cell research require attention and further debate in Europe. Our democratic societies should offer the necessary safeguards to ensure that the development and applications of biotechnology take place respecting the fundamental values recognised by the EU in the Charter of Fundamental Rights, in particular by confirming the respect for human life and dignity.

Europe is faced with a major policy choice. It will either accept a passive and re-active role, and bear the implications of the development of these technologies elsewhere, or develop pro-active policies to exploit them in a responsible manner, consistent with European values and standards.

²⁶ Drs Line Matthiessen-Guyader & Gwennael Joliff-Botrel; *'Stem Cell Research at the European Level'*; Business Briefing: Pharmatech 2002 pp. 91-94.

LAW AND RELIGION IN A MULTICULTURAL CONTEXT - A FALSE CONFRONTATION OF VALUES?

CHRIS SOLER

The Role of Religion in the Public Sphere

To address the place of religion in the public sphere requires us, above all, to define what we mean by the phrase “public sphere.” The term invokes a common societal organization. The public sphere may be said to be the organized and concretized common space of a given population; it is clearly separate from private space, which allows individuals and families to live their religions privately. In viewing the State as the first intermediary between society and citizens, for Europeans the public sphere is the space where the State exerts its authority for the benefit of all and at the service of all.

With regard to the role of religion in the major part of the European public sphere, it may be said that religion in Europe once fell, and, from a number of perspectives, still falls to the responsibility of the State. For a very long time, religion was used for the purpose of uniting disparate populations and areas and was thus the best way to build a public sphere. The legacy of these former times remains influential, not only, by the frequent and legal occurrence of a specific relationship between the state and religion, with the state granting religious status and limiting the scope of a religion’s activities, but also by the normative tendency to consider religion as a public, charitable, educational, and even spiritual service.

Paradoxically, because of the historical relationship between the state and religion, and the subsequent reaction against it, separation between church and state was reached in many States. In Europe, separation between church and state connotes the State’s regulation of the public sphere and religious freedom in the private sphere. Separation between church and state was established in a number of European States for the benefit of the confessional neutrality of the State vis-à-vis religion, which neutrality in theory works to guarantee freedoms for citizens and to ensure a governmental system based on liberal, universal, and reasonable values, rather than religious values.

A note on Malta vis à vis confessional neutrality would not be amiss. In Malta, the position vis-à-vis this issue is clearly outlined by the Constitution, which states:

- (1) The religion of Malta is the Roman Catholic Apostolic Religion.
- (2) The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong.
- (3) Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State schools as part of compulsory education.

It must be highlighted that this is a mere declaration of principles which does not create enforceable rights.

The concept of separation, however, has surely led to a more visible secularization of the public sphere. To some extent, the secularization of the State, that was gradually or abruptly reached, depending on the nation's history, allowed the citizens to exercise their freedom of conscience and to avoid membership in a single or state-authorized religion. However, this secularization often led to the disappearance of religion from the public sphere. For example, in France, the Conseil d'Etat established in September 1972 that the State's neutrality principle unequivocally required that its public officers not wear any manifestation of religious adherence while performing their public functions. The departure from the fused relationship between religion and the State in Europe led not only to a secularization of the public space but also to a 'privatization' of religion.

Freedom of and from Religion

Does Europe need to question its commitment to the requirements of religious freedom? The general European system often regards religion in the public sphere as an interference and a form of competition that it is necessary to control and contain. When public expression of religion is organized in a specific manner by the State, things may appear to be normalized; the State retains some control of what expression is and is not acceptable. The State fixes the rules of religious expression in a space (the public sphere) that it controls and that is very large. The State is neutral from a denominational point of view, but religions must pass through its formal or abstract recognition process in order to be accepted in the public sphere.

Thus, although the mechanisms are in place to foster genuine religious freedom, it takes a religious organization's time and hard work to enjoy the concrete implications of religious freedom. Liberty in the public sphere is currently theoretically recognized for all religions, and nation-states in Europe are likely to slowly lose their old, strict supervisory status. The examples of Italy and Spain are illustrative because both states had been historically denominational, had entered into concordats with the Vatican, and had recognized public religious demonstrations by only the Catholic Church. Recently, however, they have undergone evolutions modifying how they deal with religious freedom.

Inter-Religious Dialogue

We live in a world where forces of cultural homogenization are at work. At the same time, communities and individuals alike often manifest the search for distinctiveness. This

distinctiveness is manifested by many peoples in their quest for self-preservation/self-determination. In some cases, religious and cultural differences are blurred or even ignored. In other cases, they are exaggerated. Religious plurality poses an unprecedented challenge; it is both embraced and feared. In many ways, better relations with neighbours of other religions are sought. Yet relations between religious communities are marked, in many places, by suspicion or hostility.

What does inter-religious dialogue mean for us today? Dialogue between religions may be said to be a defining characteristic and a pressing challenge of the modern world.

Today the significance of dialogue bears heavily upon the deepest concerns we have for the future; a healthy dialogue between the leaders of various Christian denominations, Islam and Judaism is essential for a functioning and secure European society.

The scope and rationale of inter-religious dialogue may be considered essential to forge positive relationships between believers belonging to different religions, to establish justice and peace within society and to foster a climate of trust and mutual respect through knowledge about other faiths.

Religious Tolerance and Non-Discrimination

Religious toleration is the condition of accepting or permitting others' religious beliefs and practices which disagree with one's own. Historically, toleration has been a contentious issue within many religions as well as between one religion and another. At issue is not merely whether other faiths should be permitted, but also whether a ruler who is a believer may practice or permit tolerance. In the Middle Ages, toleration of Judaism was a contentious issue throughout Christendom. Today, there are concerns about toleration of Christianity in Islamic states.

For individuals, religious toleration generally means an attitude of acceptance towards other people's religions. It does not mean that one views other religions as equally true; merely that others have the right to hold and practice their beliefs. Proselytism (attempts to convert a person from one point of view to another, usually in a religious context) can be a contentious issue; it can be regarded as an offence against the validity of others' religions, or as an expression of one's own faith.

Additionally, freedom of religion and belief is a guarantee by a government for *freedom of belief* for individuals and *freedom of worship* for individuals and groups. It is considered by many to be a fundamental human right. The Universal Declaration of Human Rights adopted by the 58 Member States of the United Nations General Assembly on December 10, 1948, in Paris, defines freedom of religion and belief as follows:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.

Freedom of religion as a legal concept is related to but not identical with religious toleration, separation of church and state or laïcité.

From a European (even European Union) perspective, the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed on January 20, 1950, at Strasbourg, states:

Article 2

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.

Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Additionally, in the Maltese context, section 40 of the Maltese Constitution states:

- (1) All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship.
- (2) No person shall be required to receive instruction in religion or to show knowledge or proficiency in religion if, in the case of a person who has not attained the age of sixteen years, objection to such requirement is made by the person who according to law has authority over him and, in any other case, if the person so required objects thereto:

Provided that no such requirement shall be held to be inconsistent with or in contravention of this article to the extent that the knowledge of, or the proficiency or instruction in, religion is required for the teaching of such religion, or for admission to the priesthood or to a religious order, or for other religious purposes, and except so far as that requirement is shown not to be reasonably justifiable in a democratic society.

- (3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subarticle (1), to the extent that the law in question makes provision that is reasonably required in the interests of public safety, public order, public morality or decency, public health, or the protection of the rights and freedoms of others, and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.

Christianity

The Christian view of marriage, until recently, according to a nearly universal consensus, has regarded marriage as ordained by God for the lifelong union of a man and a woman. Since the rise of the sexual revolution, new views have gained ground even among Christians. Marriage between two persons of the same gender, or divorce through mutual consent are both new views brought on by the sexual revolution. These views, though now popular in the modern day, conflict with and contradict orthodox Christian beliefs. Virtually all Christian denominations frown on divorce although some more harshly than others. With specific regard to divorce, it must be said that within Christian societies, divorce has become almost commonplace, and the interpretation of the Holy Scripture on divorce widely varies among Christian denominations. However, for the first 400 years of the Early Church, the church maintained a rather unanimous voice on divorce.

Christian marriage is seen as paralleling the relationship between Christ and the Church, a theological view which is a development of the Old Testament view that saw a parallel between marriage and the relationship between God and Israel.

In Roman Catholicism, marriage is one of the seven sacraments. Marriage forms the foundation of the family, the fundamental unit of the referring community (ordinarily the parish). The primary purpose of marriage is to fulfill a vocation in the nature of man and woman, for the procreation and education of children, and to stand as a symbol of the mystical union between Christ and his Church. The secondary aim is the mutual reciprocal help and it is also a remedy to concupiscence. Fecundity is a good, a gift and an end of marriage. By giving life, spouses participate in God's fatherhood. Sexual Intercourse is morally legitimate only when a definitive community of life between a man and woman has been established. Human love does not tolerate trial marriages; it demands a total and definitive gift of persons to one another.

Traditionally, sexual intercourse was termed the marriage debt. This refers to the idea that marriage is a contract where each party assumes total control of the other's body. At almost

any time, within reason, a partner's asking for the fulfilment of that debt had to be satisfied. Like any repayment of a debt, when done with the right intention and circumstances sexual intercourse is a meritorious act, gaining graces for the participants. In modern times, however, the church has taught a far less severe view of obligatory fulfillment, where it is understood that both spouses intend, by accepting the sacrament of marriage, to fulfill the reproductive moral mandate at some point in their marriage, but not on the demand or whim of one spouse, nor under any circumstance should a spouse ever be forced to comply against their will, even if failure to do so led to never having children/lack of fulfillment.

One issue is that of 'mixed marriages', with one of the spouses belonging to a non-Christian religion: these marriages are not considered sacraments, since the letter of Canon law expressly defines the marriage as a "covenant" between baptized spouses. Still, a marriage between non-baptized spouses is called *legitimum* when validly celebrated, but it is really not encouraged.

Polygamy is described as "not in accord with the moral law". Conjugal communion is radically contradicted by polygamy; this, in fact, is contrary to the equal personal dignity of men and women who in matrimony give themselves with a love that is total and therefore unique and exclusive.

In Eastern Orthodoxy, marriage is also treated as a sacrament, and as an ordination, and (like all ordinations) like a martyrdom, as each spouse learns to die to himself or herself for the sake of the other. Like all ordinations, it is viewed as revealing and sealing the relationship that has formed between the couple. In addition, marriage is an icon or image of the relationship between Jesus and the Church. This is somewhat akin to the Old Testament prophets' use of marriage as an analogy to describe the relationship between God and Israel. Divorce is discouraged, but allowed, in some cases to acknowledge that the relationship no longer exists. A married man may be ordained as a priest or deacon. However, a priest or deacon is not permitted to enter into matrimony after ordination, whether he has become divorced or widowed, or even if he had not been married at the time of ordination. Overall, there is a far less legislative approach regarding married life than in Roman Catholicism.

Protestant denominations tend to have their own individually applicable doctrines, which represent only the churches in communion with one another. However, some beliefs are typical of almost all Protestants. Also there are intra-denominational and cross-denominational movements, within which the beliefs and practices of adherents are more narrowly defined.

Almost all Protestant denominations hold marriage to be ordained by God for the union between a man and a woman. Most of them also hold that the primary purpose of this union is to glorify God by demonstrating his love to the world; other purposes of marriage include the raising of children and bringing help to enable both husband and wife to fulfill their life callings.

In addition to the limitations on who may marry, Evangelicals take a strict view of the nature of marriage. For Evangelicals, marriage is the only appropriate channel for sexual expression and divorce is permissible, if at all, only in very specific circumstances such as

infidelity. Marriage is seen as a solemn covenant between the couple and God. The man is seen as the head of the household and his wife is expected to submit to him. However, there are two views within evangelicalism of how this should work out in practice:

1. The traditionalist or complementarian view sees the husband as having loving authority over the wife as the servant-leader of the household. The wife's role is to readily submit to this authority where it does not conflict with her conscience or with biblical teaching.
2. The egalitarian view sees the husband's headship as meaning he is the source who works to ensure his wife's growth and development as a person.

Proponents of both views emphasise that headship and submission are worked out in the context that a husband is expected to protect and care for his wife and put her needs before his own. These principles reflect the concept that Christ is the head of the Church, or those who call themselves His followers, and loves her even to the point of dying for her.

'Liberal Christians', almost by definition, give a great deal of consideration to cultural norms. In the Western world, the primary place where liberal Protestantism is found, pre-marital sex, same-sex marriage (and to some extent homosexuality in general) and divorce are increasingly becoming the norm and so liberal Protestants have become increasingly accepting of these practices. While liberals view divorce as regrettable, they generally do not believe it to be sinful. Likewise, pre-marital sex may be considered to be unwise, but since it is not unusual it is often considered to be acceptable. Since the rise of feminism liberals also generally reject any claim of male headship and see the husband and wife as an equal team.

In The Church of Jesus Christ of Latter-day Saints, "Eternal Marriage" is a sacred covenant between a man, a woman and God performed by a priesthood authority in the temples of the Church. Eternal Marriage is legally recognized, but unlike other civil marriages, Eternal Marriage is intended to continue into the afterlife after the resurrection if the man and woman do not break their covenants. Eternally married couples are often referred to as being "sealed" to each other. Sealed couples who keep their covenants are also promised to have their posterity sealed to them in the after life. Thus, the slogan of the L.D.S. Church: "families are forever". The L.D.S. Church encourages its members to be in good standing with it so that they may marry in the temple. "Cancellation of a sealing", sometimes incorrectly called a "temple divorce", is uncommon and is granted only by the highest authority in the Church. Civil divorce and marriage outside the temple is somewhat of a stigma in the Latter-day Saint culture although currently the Church itself directs its local leaders not to advise members about divorce one way or another.

In the New Church (or Swedenborgianism), marriage is considered a sacred covenant between one man, one woman and the Lord. The doctrine of the New Church teaches that married love (sometime translated as conjugal love) is "the precious jewel of human life and the repository of the Christian religion" because the love shared between a husband and a wife is the source of all peace and joy. Marriage is also meant to be eternal and divorce is

only allowable when the spiritual union is broken by adultery. When a husband and wife work together to become angels in heaven, their marriage continues uninterrupted even after the death of their bodies, living together in heaven to eternity.

While abortion has been accepted by some liberal Christian denominations, many Evangelical and Fundamentalist Christians have actively opposed both the legal right of a woman to undergo an abortion and its practice within the wider community.

This stance is at odds with the views of many people who support the right of abortion. Evangelical and (Fundamentalist) Christians have opposed abortion mainly because of their belief in the Bible as the unchanging and inspired Word of God, as well as the interpretive framework that is used to understand and apply it. Through this belief and process of interpretation, Evangelical and Fundamentalist Christians have come to the conclusion that abortion is morally wrong. Moreover, many of them see the termination of a human embryo in pregnancy or in a test tube as murder.

Judaism

Judaism regards the family as the carrier of tradition and the agent for the perpetuation of the Jewish people. Hence, marriage is one of the most important milestones for both Jewish men and women. Marriage is considered the natural state of Jewish life, and necessary for personal fulfilment. According to Jewish thought, the relationship that most closely parallels the relationship between man and God is the marital union between a man and a woman; singlehood is not encouraged within the Jewish tradition.

Chesed [“kindness”] is considered one of the foundations of the Jewish personality. According to Jewish tradition, a Jew is required to not only practice *chesed*, but to do so in an abundant measure. However, *chesed* is more than merely doing charitable acts; it includes the ability to shift the entire focus of one’s concerns whereby one completely identifies with others’ troubles and sorrows. In other words, traditional Judaism views kindness as acts that emanate from completely unselfish drives. A person who acts out of *chesed* does not act from concern for his or her own moral advantage, but from a genuine concern for the welfare of others. *Chesed* involves the merging of our own concerns with those of our neighbours, so that we no longer only think in terms of ourselves.

This idea of *chesed* begins with those who are closest to us, namely, our spouses and our families. Certainly, marriage is the beginning of *chesed*, for when one marries he or she becomes obligated to shift the focus of his or her concern from him or herself to his or her spouse. Acts of *chesed* lay the foundation for a marriage of peace and harmony, which leads to the next noteworthy trait of the Jewish family - *shalom bayit*.

Throughout the history of the Jewish people, Jews have held an ideal standard for Jewish family life that is manifested in the term *shalom bayit* [“peace in the home”]. The term *shalom* [“peace”] also signifies completeness, wholeness, and fulfilment. Hence, the traditional Jewish marriage is characterized by peace, nurturing, respect, and *chesed*, through which a married couple becomes complete. In Jewish culture, a marriage is described as a “match made in heaven,” and is treated as a holy enterprise. For example, the

Jewish marriage ceremony is known as Kiddushin [“sanctification”, or “consecration”]. By declaring the marriage union sacred, a couple stands sanctified before God. It is in a relationship where both husband and wife recognize each other as creations in God’s image and treat each other accordingly that true sanctity emanates forth. Moreover, this sanctity of the marital union reminds the Jewish husband and wife to express their holiness through marriage and to build a home based on mutual love, respect, and *chesed*. *Shalom bayit* is considered to be so important in Jewish life that Jewish law allows certain latitude for those who wish to foster it, such as erasing the name of God, which is almost otherwise never allowed.

Traditional Judaism prescribes certain laws that determine how a husband and wife can create a family with a minimum amount of strife. These laws include role divisions, inheritance rights, how the family should approach financial support, and how a husband and wife should treat each other emotionally.

If a husband and wife cannot live together harmoniously because they have developed irreconcilable differences, traditional Judaism allows them to divorce. Divorce is not taken lightly among Jews.

Since marriage is a unilateral contract that is initiated by a husband, so too must a husband be the one to initiate its dissolution. According to the Bible, precisely the Deuteronomy, a husband is permitted to divorce his wife at will and send her out from his home. The reciprocal, however, does not hold; a wife has no leverage to prevent divorce proceedings initiated by her husband, nor does she have the power to initiate divorce proceedings against her husband. This difference in power certainly has abusive overtones. However, as simple and cruel as this sounds, there are a few qualifications amongst which the bill of divorcement, alimony settlement, and the restricted divorce ground that he can only divorce her if he has not falsely accused her of having premarital sex after their betrothal nor has been forced to marry her originally because he had raped her prior to the marriage [these are the only two Biblical instances in which a husband is forbidden to divorce his wife] and he may not divorce her if she is insane or else so mentally incompetent that she cannot care for herself. All four of these qualifications are meant to protect wives from husbands who might otherwise, during a fit of rage, simply pronounce a declaration of divorce and sever all ties with them, thus leaving them financially bankrupt and unable to remarry [due to the stigma attached to divorced women]. Moreover, although a husband initiates a divorce, it is only acceptable if his wife accepts it; if a wife does not accept a divorce, a husband is forbidden to divorce her, unless there exist mitigating circumstances in which a bet din [“Jewish court of law”] forces a wife to divorce her husband. A wife’s unwillingness to accept a divorce is about the only power that a woman really has in Jewish divorce proceedings, since she cannot initiate divorce proceedings. The problem of Jewish divorce, and where the potential for abuse lies, is in the unilateral nature of Jewish marital and divorce law, namely men’s sole power to effect a divorce.

The traditional Jewish view of abortion does not fit conveniently into any of the major “camps” in the current abortion debate. Jews neither ban abortion completely, nor do they allow indiscriminate abortion “on demand.” To gain a clear understanding of when abortion

is sanctioned, or even required, and when it is forbidden, requires an appreciation of certain nuances of halacha (Jewish law) which govern the status of the fetus.

The easiest way to conceptualize a fetus in halacha is to imagine it as a full-fledged human being - but not quite. In most circumstances, the fetus is treated like any other "person." Generally, one may not deliberately harm a fetus, and sanctions are placed upon those that purposefully cause a woman to miscarry. However, when its life comes into direct conflict with an already born person, the autonomous person's life takes precedence.

It follows from this simple approach that, as a general rule, abortion in Judaism is permitted only if there is a direct threat to the life of the mother by carrying the fetus to term or through the act of childbirth. In such a circumstance, the baby is considered tantamount to a rodef, a pursuer after the mother with the intent to kill her. Nevertheless, if it would be possible to save the mother by maiming the fetus, such as by amputating a limb, abortion would be forbidden. Despite the classification of the fetus as a pursuer, once the baby's head has been delivered, the baby's life is considered equal to the mother's, and one life may not be chosen over another.

Judaism recognizes psychiatric as well as physical factors in evaluating the potential threat that the fetus poses to the mother. However, the danger posed by the fetus (whether physical or emotional) must be both probable and substantial to justify abortion. The degree of mental illness that must be present to justify termination of a pregnancy is not well established and therefore criteria for permitting abortion in such instances remains controversial.

As a rule, halacha does not assign relative values to different lives. Therefore, almost all major poskim (Rabbis qualified to decide matters of Jewish law) forbid abortion in cases of abnormalities or deformities found in a fetus.

The question of abortion in cases of rape, incest, and adultery is a complex one, with various legal justifications propounded on both sides. In cases of rape and incest, a key issue would be the emotional toll exacted from the mother in carrying the fetus to term. The same analysis used in other cases of emotional harm might be applied here.

Islam

Marriage in Islam is considered to be of the utmost importance. A saying attributed to Muhammad states that "marriage is half of religion". In Islam, marriage is a legal and social contract and bond between a man and a woman as prompted by the Shari'a. There are two types of marriages mentioned in the Quran, the Nikah and the Nikah Mut'ah.

In Islam, both genders equally have rights and obligations as well as distinct roles, although the Qur'an does state that men have a superior authority, as seen from the following verse: "Women have rights equal to what is incumbent upon them according to what is just, although men are one degree above them" (Q. 2:228; see also Q. 4:34).

While there are guidelines regarding the roles of men and women in Islamic society, today these roles are defined as much by the times people live in and geographical location. In more conservative societies such as Saudi Arabia, women may not drive a vehicle, despite the historical precedent of women riding animals and running businesses. In some Islamic societies women wear a 'chador' or 'hijab' [veil], which may cover the whole body or head; in yet others, they may dress modestly and not wear revealing clothes, but there is no compulsion to wear a veil. They may work and travel, entertain guests, be comfortable in mixed company and play sports at public venues. These differences in life all over the world indicate that while Islam has laid out guidelines for Muslim women to follow, local customs play a role in how women dress.

Women are expected to be home-makers and caregivers to their children, as well as educated. Again, in conservative societies such as in rural Pakistan, women are sometimes barred from education by the male members of their families. Men are directed to be caring husbands. They are expected to avoid habits and indulgences such as intoxication and gambling. They are expected to be role-models for their children.

Nikah is the first and most common form of marriage for Muslims described in the Quran. It is intended to be permanent, but can be terminated unilaterally by the husband or at the request of the wife engaging in the Talaq (divorce) process, which is permitted, and is theoretically a last and, according to some traditions, a resented resort. The couple inherit from each other (unless the wife happens to be a non-Muslim, in which case she inherits nothing) and a legal contract is signed when entering the marriage, according to the stipulations found in Q. 2:282). Also, the husband must pay for the wife's expenses and the wife is not allowed to leave her house against her husband's will.

Nikah Mut'ah, or "fixed-time marriage", is the second form of marriage described in the Quran. It resembles a Nikah in many aspects. There is controversy on the legality of this type of marriage, since Sunnis believe it was shunned by Muhammad although they agree that it is in the Quran, while Shias regard it as valid. Since Nikah Mut'ah has a preset time period to the marriage, the couple do not inherit from each other, the man is not responsible for the economic welfare of the woman and she may leave the home at her own discretion. It also does not count towards a maximum of wives. Other variations also exist, typically harboured by the Sunnis.

In some cultures, the basis of a marriage is widely believed to be love. Although love is important within Islamic marriage, it is not the basis of marriage. For a man, marriage is a duty: He is expected to marry as soon as he can financially support a family. In marriage, love is not his first priority, The love in a marriage is expected to come as a result of correctly worshiping God. When a problem with the marriage arises, the first step is not to try to reignite the love, rather it is to verify that the Islamic ways are being practiced. It is believed that when this is achieved, harmony will come to the family, which naturally leads to a feeling of safety and gratitude, resulting in genuine love.

Muslims believe that Islam provides a detailed and accurate description of how to achieve a harmonious marriage, since the instructions came from the creator of man. At the same time, since Islam condemns premarital sex and encourages early marriage, most Muslim

youths have grown up with a clear picture of how and what Islam expects from them in a marriage, and in the first hand do not seek love, but rather seek a mate that fulfills their expectations of a good Muslim marriage, expecting that to lead to lasting love.

Islam grants the right to the husband to declare divorce unilaterally, and to the wife to request it especially if relations between the spouses become unbearable and impossible. However, Islam encourages reconciliation between spouses rather than severance of their marriage.

The four schools of Islamic jurisprudence have agreed that divorce is Makruh (disapproved) when it is not essential, that is, if there is no harm anticipated either to oneself or one's wife, and there is still some hope of reconciliation.

Divorce is generally referred to as talaq, which literally means 'repudiation'. Talaq proper is the husband's right to divorce his wife by making a pronouncement that the marriage is dissolved without being required to give reasons for such a decision. Directly placing the right to divorce in the hands of the husband has to be understood in the context of the qiwama issue, which considers the male to be the provider of his family. This is because in Islam the husband has financial responsibilities as a consequence of divorce.

In Islamic law, talaq can be categorized into two forms: talaq al-sunna, which is consistent with the Prophet's teachings, and talaq al-bidaa, which is considered an innovation that does not follow the Prophet's teachings. Talaq al Sunna has two subcategories, talaq ahsan and talaq hasan. The former is the most authentic divorce.

Some classical jurists acknowledge that even though the husband enjoys a unilateral right to divorce, it is not an absolute right and there are some restrictions. However, there is some disagreement among jurists on what would render the divorce invalid. All four schools of law have acknowledged that the triple declaration of divorce during a single session (talaq al-bidaa/thatath) is sinful but still valid, and this reflects the power of social custom and its infiltration into Islamic law.

The classical schools of jurisprudence have agreed on the following means by which the wife can obtain a divorce:

1. Delegated Talaq or Talaq Tafwid: under Talaq a wife has the right to divorce only if the husband has delegated this right to her. This delegation can take place before or after the marriage and, hence, can be included in the marriage contract. This delegated form of talaq is known as the right of women to divorce at will. However, it is worth mentioning that this kind of divorce does not deprive the husband of his original right to exercise divorce.
2. Khul: the right of a woman to khul is based on her sacrifice of part or all of her dowry to her husband in order to obtain a divorce (see Q. 2:229). The husband cannot return to her without her consent. Moreover, in

other contexts, a wife is permitted to request a khul from her husband if she fears he will be cruel or desert her.

All classical jurists agree on the legality of khul. The Maliki jurists define khul as “a divorce by giving something in return,” while the Hanafi jurists say that “it is the end of a marital relationship by consent, either with the utterance of the word khul or something that has the same meaning.”

The Shafi’i jurists define it as “the separation with something given in return” through the pronouncement of the word of khul or divorce in return. However, khul can be achieved through mutual agreement of the two parties or through the order of the Qadi [judge] on payment by the wife to the husband a certain amount of her dowry (mahr). The latter opinion is adopted by the Maliki school of law. Moreover, according to Imam Malik, the wife is entitled to retrieve her dowry if her husband forces her to enter into khul; however, the separation will still be considered valid.

3. Divorce by judicial authority: The schools of law differ considerably in the number and kinds of grounds available to women who wish to divorce. The Maliki school, followed by the Shafii and Hanbali schools, gives the widest interpretation. The Hanafi school is more circumspect. Other than some procedures of the marriage itself, the Hanafi school restricts the judicial process and holds that “a court may dissolve a marriage only if ... a husband is unable to consummate the marriage . . . [or if] he is missing.”⁷² In contrast, the more liberal Maliki law allowed divorce on several grounds: maltreatment and harm (darar), refusal or inability to maintain the marriage, desertion or absence for more than one year, and physical or mental defect that would make a continuation of the marriage harmful to the wife. The Maliki jurisprudence is the only school that utilizes the concept of darar but leaves it in the hands of the judge to be assessed.
4. Breach of conditions in the marriage contract: marriage in Islam is a contract, and divorce is the dissolution of that contract. Therefore, the marriage contract can include any condition that the couple approves, and any breach of the clauses included could be a basis for divorce. One of the conditions that has been included in marriage contracts in some parts of the Muslim world is that if the husband remarries another woman, the first wife will be automatically divorced. Other conditions have included no divorce unless by mutual consent.

As for the financial consequences of a marriage’s dissolution by the husband, nothing shall be returned to him and he has to pay his wife all her material rights. In the case of the woman herself demanding a divorce, she has to remit the dowry (mahr), unless otherwise

arranged. As for the children, the divorced wife is allowed to care for them, but the husband remains the sole legal guardian, and they ultimately belong to him.

Having discussed the rights of men and women regarding divorce in Sharia, it is worth noting that, though the Quran originally gave man the right to divorce, there is an emphasis in many Quranic verses on the importance of being just, of fearing God in any decision, and of holding together on equitable terms or separating with kindness. Moreover, there are many warnings regarding the misuse of this right: the Quran stresses that the relationship between spouses shall be based on love and mercy, that women shall have rights similar to those against them, according to what is equitable, and that a man should not take them back to injure them, (or) to take undue advantage. The Quran also gives men and women equal and reciprocal rights to each other.

However, in classical Islamic jurisprudence, this positive spirit of the Quran was not necessarily reflected and no major restrictions were posed on the right of men to divorce, though many Quranic verses state that there will be punishments awaiting those who exceed the limits set by same Quran. Moreover, because most jurists have considered the right of men to divorce to be a unilateral right and the consent of the wife unimportant, even after talaq and during the period of iddah, they have given the man the right to return to his wife without her consent.

Now, as to abortion, according to the teachings of the Prophet Muhammad (pbuh), the soul is placed in the fetus after 120 days. This is the Prophet's explanation of the meaning of several passages in the Quran that discuss the stages of development of the fetus. Under Islamic law, the fetus is considered a human being after the end of the fourth month. From this, it is clear that abortion after the fourth month can only be allowed in Islamic law if, among other things, it is the lesser of two evils, that is, if the mother's own life is at risk.

There is a difference of opinion among the scholars about whether abortion is permitted during the first four months of pregnancy, and for what reasons. The majority of scholars hold that as a general rule it is forbidden, but there may be specific exemptions or concessions under the law; they also differ on how extensive such exemptions are.

The conservative Saudi scholar Shaykh Muhammad al-Munajjid holds that during the first 40 days, abortion is permissible if it serves a legitimate shari'i interest or wards off harm. The exemptions are more limited between 40 and 120 days: if the fetus is deformed, if the woman was raped, or if continuing the pregnancy would damage the health of the mother. Overall, one may say that abortion is permissible in limited circumstances during the first four months, but the restrictions become greater as the fetus develops and comes closer to ensoulment.

One of the main arguments of pro-choice activists is that during the time when the fetus is not considered a human being as yet, it is an issue of a woman's right to do with her body what she chooses; a religious Muslim cannot think about it this way in the light of the Muslim belief that the body has been given by God as a trust and will be called to account for what has been done with such.

Yet another issue is that of whether the fetus is a human being yet. In general, it is common Muslim belief that the fetus is still a living being. Islamic law is rather strict about taking even animal life; it has to serve some benefit (legitimate shari'i interest), such as providing food and must be done in as swift and merciful a manner as possible, and God's name must be spoken over the action, to remind the Muslim by Whose leave he/she can take life. Muslims believe they have been given dominion over the living things of the earth as a trust, and God will call them to account for what has been done with such responsibility.

A Note on Religion and Genetics

Religious leaders have overwhelmingly voiced opposition to reproductive cloning and inheritable genetic modification. They recognize social and ethical as well as theological reasons on the basis of which the use of these technologies would run counter to fundamental tenets of their faiths.

Most of the few religious figures who support the production of human clones and genetically redesigned children cite their belief that humans are "co-creators" with God of the natural world, and as such have both the right and the duty to re-engineer our genetic makeup if this would enhance human well-being.

In June 1983 a coalition of religious leaders representing a wide spectrum of theological beliefs issued a letter to the US Congress calling for a ban on inheritable genetic modification. This *Theological Letter Concerning the Moral Arguments* said, in part:

"Genetic engineering of the human germline represents a fundamental threat to the preservation of the human species as we know it, and should be opposed with the same courage and conviction as we now oppose the threat of nuclear extinction."

Appendix I - Statistics

Religions in EU

Austria	Roman Catholic (main), Protestant, Muslim.
Belgium	Roman Catholic (main), Protestant, Muslim, Jewish, Buddhist.
Cyprus	Greek Orthodox (main), Sunni-Muslim, Maronite, Armenian Apostolic.
Czech	Roman Catholic (main), Protestant, Eastern Orthodox, atheist.
Denmark	Evangelical Lutheran (main), Protestant, Roman Catholic, Muslim.
Estonia	Evangelical Lutheran (main), Russian Orthodox, Estonian Orthodox, Baptist, Methodist, Seventh-Day Adventist, Roman Catholic, Pentecostal, Jewish.
Finland	Evangelical Lutheran (main), Russian Orthodox.
France	Roman Catholic (main), Protestant, Jewish, Muslim, Buddhist.
Germany	Protestant (main), Roman Catholic, Muslim.
Greece	Greek Orthodox (main), Muslim.
Hungary	Roman Catholic (main), Calvinist, Lutheran.
Ireland	Roman Catholic (main), Church of Ireland.

Italy	Roman Catholic (main), Protestant, Jewish, Muslim.
Latvia	Lutheran (main), Roman Catholic, Russian Orthodox.
Lithuania	Roman Catholic (main), Lutheran, Russian Orthodox, Protestant, Evangelical Christian Baptist, Muslim, Jewish.
Luxembourg	Roman Catholic (main), Protestants, Jews, Muslim.
Malta	Roman Catholic (main), Anglican, Other Christian, Muslim, Jewish.
Netherlands	Roman Catholic (main), Protestant, Muslim.
Poland	Roman Catholic (main), Eastern Orthodox, Protestant.
Portugal	Roman Catholic (main), Protestant.
Slovakia	Roman Catholic (main), Protestant, Orthodox.
Slovenia	Roman Catholic (main), Lutheran, Muslim.
Spain	Roman Catholic (main).
Sweden	Lutheran (main), Roman Catholic, Orthodox, Baptist, Muslim, Jewish, Buddhist.
United Kingdom	Anglican (main), Roman Catholic, Muslim, Presbyterian, Methodist, Sikh, Hindu, Jewish.

Appendix II - European Parliament Addresses Growing Role of Religion in European Policy; Experts Cite Rise of Religious Intolerance

European Parliament Addresses Growing Role of Religion in European Policy; Experts Cite Rise of Religious Intolerance

First seminar of its kind brings Members of Parliament together with international experts to explore impact of religious diversity on policy making in an enlarged EU

For immediate release
November 28, 2001

Contact: Paul Silva
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Brussels - At the first seminar of its kind held at the European Parliament, Members of Parliament met today with international experts to explore the role of religion in international policy making. The dialogue takes place at a time when religious institutions are increasingly interested in participating in policy debates within Europe even as the positions of some religious institutions are at odds with the values that form a European consensus on critical issues. This is particularly relevant for women's rights, gay rights, sexuality and reproduction.

“After September 11th, and the subsequent rise in religious intolerance, no one will deny the importance of religion in international politics,” stated Lousewies van der Laan, Member of Parliament for The Netherlands and a host of the meeting. “With the upcoming enlargement of the European Union, diversity will increase and so will the impact of religious differences on the debate. It is high time we had an open discussion about these issues.”

The need for such a meeting became even clearer when leaders of the Roman Catholic Church leveled harsh criticism at the Charter of Fundamental Rights adopted by the European Union last December. At the time, Cardinal Camillo Ruini, a close aide to the pope, said the charter failed to take adequate account of the “historical and cultural roots of

Europe, in particular Christianity, which represents Europe's soul and which still today can inspire Europe's mission and identity." In March of this year, Cardinal Ratzinger, the prefect of the Vatican Congregation for the Doctrine of the Faith, said that it was regrettable that "God and our responsibility before God" had not been "anchored in the European constitution."

A key speaker at the event, Frances Kissling, President of Catholics for a Free Choice, stated,

"Having experienced the desire of the Holy See for a privileged place in the United Nations, we are increasingly concerned that the Vatican is seeking similar privileges and power within the European Union. Before that happens, Members of Parliament need to consider developing guidelines for the appropriate role of religious institutions within the European Union. This seminar serves as a starting point for the development of these policies."

Representatives of the Vatican were invited to participate in the seminar but, unfortunately, no one was able to attend.

Other speakers who described religion's impact on policy and people's lives included Anissa Helie, Director, Women Living under Muslim Law, who has said:

"In the vanguard of repression are so-called "religious fundamentalists." But in the Women Living Under Muslim Laws Network, we maintain that "fundamentalism" is not a return to the 'fundamentals' of any given religion. We believe that "fundamentalists" are extreme-right political forces seeking to obtain or maintain political power through manipulation of religion and religious beliefs, as well as other ethnic, culturally-based identities. And the rise of "fundamentalism" is a global phenomenon, which affects not just Islam but all major religions."

Cecile Richards, former Director of the Texas Interfaith Network, discussed the effectiveness of the Christian Right in the United States, raising the question if these same tactics can be used within the enlarged EU.

Imma Battaglia, President of the Italian Gay Rights Movement and organizer of Rome World Gay Pride, 2000, spoke of Vatican opposition to gay and lesbian rights. The Vatican has claimed the European Charter of Fundamental Rights would cause moral and social harm by sanctioning homosexual couples. Cardinal Ratzinger was quoted as saying that the European Charter, by promoting the rights of homosexuals, had "departed from the beaten track followed by the moral history of humanity," and that he believes the "West is injuring itself and this can only be classified as pathological."

The seminar was particularly timely given current debate in the European Parliament over these and other compelling issues. A co-host of the seminar, MEP Sarah Ludford from the United Kingdom, stated that "since I believe in secular politics, I believe that religious organizations should keep to the private sphere and should not have an institutional role in public decision-making. I particularly oppose the efforts of religious groups to control moral issues at the European level, such as stem cell research and euthanasia."

“The main question is: Do we want ‘true believers’ of any religion to use the power of the state to force their ideas and prejudices on others?” asked Joke Swiebel, MEP from the Netherlands and a host of the seminar.

Along with MEPs van der Laan and Swiebel, Elly Plooij-van Gorsel, MEP from the Netherlands, was a host of the event. Co-hosts represented nearly every party at the European Parliament and included: Emma Bonino, Radicals, Italy; Ozan Ceyhun, PSE, Germany; Cecilia Malmström, ELDR, Sweden; Anna Karamanou, PSE, Greece; Sarah Ludford, ELDR, United Kingdom; Heide Rühle, VERTS-ALE, Germany; Gianfranco Dell’Alba, Radicals, Italy; Kathleen van Brempt, PSE, Belgium.

The organizing of the seminar has already inspired continuing activities that will focus on the role of religion in European politics. A report on the seminar will be produced and disseminated to all interested parties. Members of Parliament plan to establish a network to deal with the role of religious institutions within the EU. A similar network of NGOs will also be established. In addition, Muslim colleagues in the Parliament and other NGOs are planning to organize an open discussion about the role of Islam in international policy.

Emma Bonino, MEP from Italy and a co-host of the event, concluded that, “The secularization of politics is the only way to build a tolerant world where everyone can co-exist peacefully.”

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The European Documentation and Research Centre of the University of Malta was designated a Jean Monnet European Centre of Excellence in October 2004. Contemporaneously, the Centre won a grant under the Jean Monnet Project to work on a range of issues connected to citizenship, civil society and generally Malta's transition into its new role as a Member State of the European Union. One facet of this Membership is Malta's role as a Member State in the Mediterranean. In the first year of the project, the theme chosen was that of Anti-Discrimination, Inclusion and Equality in Malta in light of the *Acquis Communautaire*. This second Report focuses on The Family and Family Values as inherent in the *Acquis*, and as the *acquis* relates to the individual citizen, all within the wider context of intercultural dialogue and the development of the Union as an exponent of democratic values and of plural citizenship. It situates the Malta context within that broader picture.

The methodology adopted for the production of the studies comprising this Report was to set up groups of academic/practitioner experts and NGO experts to set the research priorities and agenda and then conduct the studies. While the experts would work separately and even produce their studies separately, group meetings were held in order to cross-fertilise ideas and approaches. Priority themes emerged in this way and certain issues became focal: the scope or coverage of the relevant multi-lateral and regional legal instruments; the interpretation of key provisions in the proposed Constitutional Treaty and relevant secondary Union Legislation; the role of religion in the public sphere; societal change in Europe and Malta; the need for dialogue with and between religions and also at the level of civil society; the vital and urgent importance of review of education for plural citizenship; the role of civil society. The studies in this Report address all these issues. The aim was to give an encompassing overview of the issues and the debates. This Report presents the fruits of this collaborative venture in which some thirty experts participated, and presents twenty-two studies offering an overall picture of the 'state of play' on the theme of The Family and Family Values in the European Union and Malta. This Report can form the basis for full discussion in a Conference to be held in September 2006 and a basis for continuing study and action.

The European Documentation and Research Centre (EDRC) of the University of Malta is a research, consultancy and teaching centre in European Integration Studies. It is a Jean Monnet European Centre of Excellence. It incorporates within it the European Documentation Centre, which houses a comprehensive collection of treaties, legislation, documentation, reports, statistics and studies published by the Commission and other institutions of the European Union.

ISBN: 99909-67-40-7 Paperback

ISBN: 99909-67-41-5 Hard Cover

THE FAMILY, LAW, RELIGION AND SOCIETY IN THE EUROPEAN UNION AND MALTA

CIVIL SOCIETY REPORT 2006

Edited by **PETER G. XUEREB**