The "Sources" of the Law

Drawing Together Norm and Life

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Using Chiara Lubich's conceptualization of individuals as one "human family," Cosseddu explores a fundamental tension in legal theory between on the one hand the freedom of persons for whom law is written, and the norms necessary for regulating life in common on the other. The interpretive key Cosseddu offers for bridging this tension is "relationality," by which the other is construed not as an object to be acted upon but as a fully personal subject who coexists with me and for me. Thus, the law serves justice by identifying situations of comfort and pain and offering the possibility of rebuilding a logic of free gift in relations. The author positions the concept of restorative justice as a "privileged space for 'dialogue' and reciprocity," and suggests that from the perspective of mutual love, the purpose of law is not to maintain boundaries but to bridge the voids in human experience.

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The State of Law Today: Life for Norms or Norms for Life?

Contemporary practitioners and scholars of law are presented with a task that offers both possibility and challenge: to discern the "signs" present in the life of a person, which serve as a witness to the times in which we live. On this basis, they can then reinterpret "life," what Hannah Arendt called "the world, understood as the space of human relations . . . the space where people meet and clash."[1] It is such a world that frames the life of Chiara Lubich, who has made of it a space where real men and women dwell, a *locus* for genuine encounter and dialogue despite whatever differences divide them. In her, peoples and cultures have found a significance not defined by fragmentation. In their variety, they appear as tiles in the mosaic that humanity can form in its call to become one human family.

An echo of this can be found in the Preamble to the Universal Declaration of Human Rights of 1948, as well as in the preamble of the statute instituting the International Criminal Court (which came into force on July 1, 2002), which notes "that all peoples are united by common bonds, their cultures pieced together in a shared heritage . . . delicate mosaic."[2] This vision of humanity

1. See Alessandra Papa, *Nati per incominciare*: *Vita e politica in Hanna Arendt* (Milan: Vita e Pensiero, 2011), 164. Author's translation. Unless otherwise noted, quotations from sources written in languages other than English have been translated by the author.

2. Approaching the basis of a "new humanism," Irina Bokova, Director General of UNESCO, has recently affirmed: "The human being is not fully itself if not in union with the other, in community. . . . But all cultures of the world are gathered together in the unity of human civilization. . . . It is our responsibility . . . to build a common space and not to exclude anyone. . . . We must infuse a new energy for solidarity and reintegrate it into the universal community." "l'UNESCO et les fondements du nouvel humanisme," *Discours à l'occasion de la cérémonie de présentation de diplôme honoris causa*

as a family in unity[3] was something Chiara thought about and experienced. It has both a personal and a social dimension, and it provides a perspective from which it is possible to look at the *being* of each human person for whom law has been established. In truth, the most important aspect of Chiara's thought is not about the law. And yet, in her own life first of all, she did not hesitate to embrace the contrasts and divisions in the social fabric, its wounds and lacerations; that is, everything that the law assumes as its particular subject matter and seeks to resolve.

Let us, then, as practitioners and scholars of law, go back to the original ideas that legal philosophers see in the "sources," even though we will have to limit ourselves to only a few essential remarks. We can begin to define these "sources" by going to "that deeply rooted underground reservoir from which the spring draws its content and its vitality." This means that when we speak of the sources of law we should refer not "to the superficial strata of society, but rather to those most hidden and fundamental, meaning we speak of the foundations of an entire legal order."[4]

Thus, it is not only the *norm* that gives life to the foundation of law. Nor does law consist solely in its norms. The legal dimension sums up the life of an entire society in its interwoven fabric of relationships and persons who, by their actions, give life to the world of relations. We are speaking here of the *experience of law*. The Italian Constitution acknowledges this to be "the coming into evidence . . . as the source of law . . . of the person and of what is formed socially by persons."[5] Georges Gurvitch affirms that "the forms of society serve . . . as the primary sources of law."[6] These are not merely dull questions of the past and the present.[7] If legal culture arrives at the point of questioning itself about "reducing" the legal system to mere laws, a *product* of the legal technique, it also starts the troublesome process that leads to "legal nihilism."[8]

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en politique européenne et internationale (Milan, October 7, 2010). In Paris, on December 17, 1996, Chiara Lubich received the UNESCO prize for Peace Education.

3. From the start Chiara located its "center" in the Fatherhood of God who is present in human history. She wrote in October 1949: "He [Jesus] too gazed upon the crowds around him whom he loved as himself. . . . He wanted to forge the bonds that would unite them to him, like children to a father, and unite them to one another as brothers and sisters. He came down from heaven to reunite us as family: to make us all one." (Chiara Lubich, "The Resurrection of Rome," *Essential Writings* [New City and New City Press: London and New York, 2007], 173). This was her reflection as she looked at Rome, the origin of a history to which its monuments continue to witness and, at the same time, the origin of a legal tradition still present in many countries. Those "crowds," meaning a collective made up of individuals and peoples, are seen by Chiara in their specifically relational dimension as children of the same Father.

4. Paolo Grossi, "Pagina introduttiva (ancora sulle fonti del diritto)," in *Quaderni Fiorentini per la storia del pensiero giuridico moderno* 29 (2000): 1–7. "Sources," as a metaphor signifies, "the point where the coming light [of a water stream] becomes visible." It is "the place . . . where it passes from invisibility to visibility," from below ground to the surface, according to Enrico Paresce, "Fonti del diritto (a) Filosofia del diritto" in *Enciclopedia del diritto* XVII (Milan: Giuffrè Editore, 1968), 893–921. Here too can be found reference to the theory of the sources of law in its complexity and evolution.

5. Gianfranco Garancini, "Figure di costituenti: Egidio Tosato e Costantino Mortati," *Quaderni dI Iustitia* (2010): 96.

6. See the recent reconstruction of Gurvitch's thought, going back to *L'idée du droit social* (Paris: Sirey, 1932), and Alberto Scerbo, "Diritti sociali e pluralismo giuridico in Gurvitch," in *Tigor: Rivista di scienze della comunicazione* 1 (2011): 45–46.

7. On the one hand, the way law is constructed, going back to Kelsen's pure theory, offers the normative guarantee through the method by which norms are made. On the other, in the variety of values in Weber's view, there can be seen "the loss, in legal theory and practice, of any kind of basis or effective anchoring for law." Gustavo Zagrebelsky, *La legge e la sua giustizia* (Bologna: Il Mulino, 2008), 90. By way of comparison with the Anglo-Saxon world, the question of sources in the analysis of the concept of "law" can be examined in H. L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1994). The topic is considered more recently in Ronald Dworkin, *Justice in Robes* (Cambridge, MA: Harvard University Press, 2006).

8. This is fundamental in general theory for Hans Kelsen, *Reine Rechtslehre* (Vienna: F. Deuticke, 1960), and taken up today by Natalino Irti, *Diritto senza verità*

In the face of what seems to be a blind alley for every kind of legal discourse, today we are directing our reflection back to the experience of law. We will bring together the world of human behavior and relationships and the world of norms in one, vast world.[9] This world operates in a tension, we could say, between the one and the many.

Let us follow Chiara from this point to the "sources" of law in the *person*. The person is the "source" of all relations, including those of a legal nature, because the person is constituted by being in *relation*. And relationship can be conceived as an original form of *otherness*, as Chiara herself states: "In the midst of the war, the most painful of divisions, paradoxically we chose the highest form of interdependence: unity."[10] Although the "way" by which this is expressed in practice is love for other human beings, leading to dialogue, for Chiara the "source" is found in the communion of a God who shares life with humankind. This communion offers the possibility of a new "style" of action in every sense of the term. Love becomes *law*, as Chiara puts it, and it can also fill with itself the living out of norms in actual experience. Indeed, law, which is called to provide norms for living for the relations between people, can become the *place* where, in Chiara's understanding, love is translated into a *culture of giving*. This was the experience of the first community in Trent, where amid the falling bombs and the carnage of war, when no other law was present, love became the norm of life, able to offer solutions to innumerable social problems in a renewed form of neighborliness.

Law therefore is not lost. But central place is given, as it were, to the typical material of human relationships for which law provides discipline. At the same time, the individual contribution of each person is not lost, but the norm that is provided and that forms the basis for personal choices does not isolate the self in a unique space that must be defended. Rather, it opens the self to every other. In this way, while the norm provides the rules, the subjects, who are part of the relationship, are entrusted with the "way of being" of the very relation to which they give life.

"Relationality": A Hermeneutic Key for Law

What has been said so far could be taken to suggest (and perhaps it does, insofar as the philosophy of law is concerned) a tension between the terms *agape* and *law*, which are generally considered irreconcilable. The terms seem opposite to one another: the first is situated in freedom and the second, traditionally, in obligation. As such they can only be coordinated, not united. Instead, re-examining the category of "civil responsibility," the Canadian scholar Nicholas Kasirer asks, "Who is my neighbor?" It is the question posed by those who practice both *civil law* and *common law* as they seek common ground in their research into *agape* and fundamental legal categories. His study begins with a new

(Rome-Bari: Laterza, 2011), in particular, pages ix-xiii and 57–64. A stage in which legal nihilism becomes a "journey" toward a new solitude that extends its shadow over law affected by a "loss of ancient foundations" is approached in the thought of Irti in his "law without truth," the "future prospects of possible laws," in other words, "all the possible contents of the human will" in each person. The basis of law, Irti notes, comes back to the individual *self*, the personal ego, where the Kelsenian view of fundamental norm is translated into the choice by each person of his or her individual *Grundnorm*. There is no lack in what Kelsen proposes of the *horizontal* dimension, which "concerns the relationship between us and the others" (115).

9. See Riccardo Orestano, *Diritta: Incontri e scontri* (Bologna: Il Mulino, 1981) 505–506, 552, and 554n92. A fundamental view is that of Giuseppe Capograssi, "L'esperienza giuridica nella storia" and "Appunti sull'esperienza giuridica," *Opere, Vol. 3* (Milan: Giuffre, 1959), 269–96 and 402–43.

10. Chiara Lubich, *Essential Writings*, 266.

question: is there "Un devoir juridique de donner?"[11] These questions can never find answers; nor does Chiara offer for these terms a *reductio ad unum*. Rather, she suggests a perspective that of itself can inform both relational life and the sphere of legal experience.

Consider the contemporary issue of globalization. While it relativizes the geography of nation-states, it also generates ways of protecting the identities of groups and traditions. Law too, so necessary for the life of nations, is no longer confined to national boundaries. And yet, without confusion, the law makes it possible to value one's own "universal" component: in its rules, and by generalizing from its principles, it can indeed address anyone. Tanella Boni, commenting on human rights in Article 4 of the UNESCO Universal Declaration on Cultural Diversity (Paris, November 2, 2001), observes: "Beyond the multiplicity of points of view, it is humanity that is under discussion . . . a humanity that is not abstract but incarnated in the 'human person' taken individually."[12]

The relational dimension that emerges in Chiara's thought helps us understand that the *anyone*, who is the subject of norms, does not remain a stranger or somebody against whom I must defend myself. Instead it is the *someone* I meet in every relation, including legal relations (seller or buyer, victim or defendant). It offers the possibility, we might say, of overcoming the widespread and seemingly insuperable gap between theory and practice, norm and life, thereby transforming the crucial legal distinction between having and being. "To *have* or to *be*" becomes *to give in order to be*. And giving also inspires a "culture of the rule of law," the first measure of our attention to the other.

It is clear that in Chiara we are introduced to "another" vision of law. Law is no longer considered only as a bond, however necessary, between precept and sanction, coercion and command, mainly concerned with the non-negotiable need for the care of the individual. It can be considered an instrument that can support life in common, even to the point of communion, among people who currently encounter each other in the enormous variety of their diversity and often fail to recognize one another or even fall into hostility. Paul Ricoeur's analysis can help to clarify this concept. It is not only a question of thinking about law as *justice*, even though this remains essential. Justice separates in order to resolve contention; that is, it decides by separating when it deals with what is, let us say, more specifically *legal* and relational.[13] Hence, on the one hand, the act of giving judgment (which in the German *Urteil* emphasizes the notion of "parts" that are dealt out) is characterized by the judgment that separates the subjects in a dispute. On the other hand, however, if *relationality* is assumed as a hermeneutic key for law, it reintroduces and recalls in every relation the concrete person who is *other*. The term *otherness* is a necessary "part" of the very relation to which law gives life.[14] Building relationships, then,

11. Nicholas Kasirer, Director of the Quebec Research Centre of Private and Comparative Law, "Agapè," *Revue internationale de droit comparé* 53 (2001): 575–600.

12. Tanella Boni, originally from the Ivory Coast, was professor of philosophy at Cocody, Abidjan. See her "Les droits de l'homme: Garants de la diversité culturelle," in *Résonances: La diversité culturelle: Une voie vers le développement* (Paris: Unesco, 2011), 23. About the Declaration cited here, see also Ban Ki-Moon, Kofi Annan, Claude Lèvi Strauss, Amartya Sen.

13. Paul Ricoeur, *The Just,* trans. David Pellauer (Chicago: University of Chicago Press, 2000), 130.

14. The burning questions remain today for the philosophy of law. They have to accept the distinction between *legality* and *justice*, as pointed out by Bruno Romano in *Due studi su forma e purezza del diritto* (Turin: Giappichelli, 2008), 15 and 18–22. Here, "that self-questioning interested in the *truth*, understood . . . as the quality of relations among people" can be seen as the "measure to orientate the application of laws." There is also a further dimension of the dialogue, in which each person can be observed to

requires an "open" space, where the *otherness* in every legal relation can be experienced inasmuch as it is necessary to my *being*. At the same time, however, this is the "presence" of the *other* who looks to the law for protection, recognition, and inclusion into social life.

Here we have the legal dimension of "communion" as it is possible for the law. It is a paradigm that is not limited to the usual hereditary nature of jointly owned goods. Rather it is a communion that opens itself to the totality of the person following a new form of life in common as it is taking place within the historical process. Jürgen Habermas proposes a positive law capable of "linking solidarity with justice" in which "each person is responsible for the other."[15] In this way, by providing norms for every kind of human life in common, law becomes something that can be questioned, since every norm also has someone to whom it is addressed: namely, the one who is *other than me* in a relationship, even though for Chiara, this person is also *another me*.[16]

Hence, we are dealing here with norm and life in dialogue with each other, proceeding from norms as *static* conditions to the *dynamism* of the relations they concern. It is true, at least in continental Europe and Latin America, that the legal relationship in itself is characterized to a great degree by abstraction. In such a world of norms, the concrete person with his or her vital needs does not exist; instead, there are abstract figures and typical roles, subjects to whom are ascribed rights and duties. And yet, in one of the last conversations with Norberto Bobbio, *duty* is defined as what the other has a right to expect from me,[17] hence as our *giving*. It is an interpretative key that could redefine the reciprocity typical of the law, seeing it as a *relational* dimension between rights and duties. This recalls that the norm, in providing rules for our life in common, comes alive in the relations between subjects.

In a posthumously published comment, Piero Calamandrei says that "law and duty are always affirmed in reciprocal form"; law "cannot be affirmed in me without at the same time being affirmed in all of my fellows . . . it cannot be offended against by one of my fellows, without offending me."[18] Thus, as a result of the space for freedom and responsibility that the law leaves to each person,

"receive from the other the gift of the contents of his or her communication . . . living in common with the other in a third locus: the *space for dialogue*."

15. Jürgen Habermas, *Solidarietà tra estrane: Interventi su "Fatti e norme*," ed., L. Ceppa (Milan: Guerini e Associati, 1997), 11 and 96; and Jürgen Habermas, *The Inclusion of the Other: Studies in Political Theory,* eds., Ciaran Cronia and Pablo De Greift (Cambridge: MIT Press, 1998), 10. Gurvitch also has a concept of social law as "the law of integration, of communion and collaboration." It is, he explains, "a law of peace, of mutual help, of shared work" (Scerbo, *Diritti sociali*, 46). For further discussion, see also Rocio Caro Gándara and Antonio Márquez Prieto, "Il Diritto di Comunione di Georges Gurvitch e l'Economia di Comunione: Prime esplorazioni," in Luigino Bruni and Luca Crivelli, *Per una economia di comunione: Un approccio multidisciplinare* (Rome: Città Nuova, 2004), 155–61; Vera Araújo, "Relazione sociale e fraternità: paradosso o modello sostenibile?" *Nuova Umanità* 6 (2005): 868–70. See also Giuseppe Capograssi, *Appunti*, 414: "the law concerns the mutual help."

16. This can be inferred, as a comment upon the golden rule, from the text "Una legge impressa in ogni cuore," in Chiara Lubich, *L'arte di amare* (Rome: Città Nuova , 2007), 60. For another perspective, Kelsen's insights are significant. See "Staatsform und Weltanschauung," *Die Wiener Rechtstheoretische Schule: Ausgewählte Schriften von Hans Kelsen, Adolf Julius Merkl und Alfred Verdross* Vol. 2 (Vienna: Europa-Verlag, 1968), 1923–42, in particular 1928, where the author, commenting upon the ideas of freedom and equality in comparison with the other, introduces the expression "das bist Du."

17. Norberto Bobbio, and Maurizio Viroli, *Dialogo intorno alla repubblica* (Rome-Bari: Laterza, 2001), 45.

18. And again, in a passage from 1940, Calamandrei notes,"Each person knows that in the very moment he affirms his own right, he recognizes in that very same moment, on the basis of the same law, the right of his fellow and his own duty towards him." Silvia Calamandrei, ed., *Fede nel diritto* (Rome-Bari: Laterza, 2008), 85 and 105. A contemporary view, while confirming this profoundly normative value, posits a vision of law as "essentially interpersonal relations and more precisely the relation among

life shaped by law offers the capacity to accept (as a pattern for a global response) the relational style that Chiara, amid the horrors of war, rediscovered as the possibility of mutual love. It is lived in the gift of self for "those who are nearby." She experienced such a life from the very start, and it generated "a virtuous circle that re-established trust, renewed hope, rebuilt broken personal and civil bonds."[19] It is a *giving* that becomes a "strategy of attention" to the other person without qualification or preference, measured by the other's needs. It operates on the basis that this person is my equal, apart from any role he or she may have. The other is not an object that I act upon, but a fully *personal subject* who *coexists with* me and *for* me. What Chiara offers as a prospect for a new humanism has all of humankind, indeed each human person, at its heart. And which human person is this? It is the *other* who is my brother or my sister.[20]

Rethinking Justice "Beyond" Conflict

At this point, let us consider something else from Chiara's thought that could perhaps give greater reality to the legal dimension of *relational communion*. Let us go back to the image that Chiara herself uses to speak of the other as understood from the standpoint of someone who sees the other as a brother or sister. It is the image of an open door, and a door is not a door if you cannot "pass through it." If that is the case, it becomes a wall, an obstacle blocking any entry.[21] The deep relational meaning of such a perspective also applies to law.

How does this apply even in the face of the abyss of evil in humanity, the terrible wounds and many walls that people have thrown up through all of history? How does it apply to a humankind that seeks justice but lives in injustice? What about the recurring image of law and justice as a "place where adversaries clash, a place of struggle, where dialogue is pushed aside" and divisions are radicalized?[22] And yet, keeping such questions in mind, even in the face of the most dramatic conflict, Chiara outlines a *model*. It takes on a value that is, as it were, methodological and, acting as the "root" and "source" of further paradigms, allows a discovery and an exploration that leads to another image of justice, changed into that very place where divisions are recomposed.

Since the time of Ulpian (Dig. I, 1, 10), the principle *suum cuique tribuere*—"giving each their own"—has been familiar. But how can we understand what this basic tenet of justice, the tenet of *giving*, truly means for each person as a human being, seen in the light of the highest dignity of every individual? This principle is deeply rooted in Chiara's thought and, as we have said, it turns into love for others to the point of becoming *a culture of giving*.[23]

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subjects recognized as *equal*." Francesco D'Agostino, *Diritto e giustizia*: *Per una introduzione allo studio del diritto* (Milan: San Paolo Edizioni , 2000), 10.

19. Chiara Lubich, "Vivere la speranza nella società globale del rischio," Orvieto, September 7, 2003 (Message from Mollens, August 29, 2003).

20. See what Chiara herself said in New York at the United Nations, May 28, 1997, in a talk entitled "Verso l'unità delle nazioni e l'unità dei popoli" (Chiara Lubich, *Una cultura nuova per una nuova società* [Rome: Città Nuova, 2002], 42–50). For a similar conclusion when commenting upon the Economy of Communion, see Tommaso Sorgi, "La cultura del dare," *Nuova Umanità* 80/81 (1992), particularly pages 87–91.

21. The powerful image here comes from an unpublished passage from 1949.

22. Luciano Eusebi, "Quale giustizia per una convivenza pacifica?" *Dialoghi* 2 (2002): 57. The current complexity of the relationship between law and justice emerges likewise in Alain Supiot, *Homo juridicus: Saggio sulla funzione antropologica del Diritto*, trans., Ximena Rodríguez (Milan: Bruno Mondadori, 2006), 13–20. Despite necessarily limiting ourselves to legal issues, a fundamental text for the ethics of "justice" is Aristotle's *Nicomachean Ethics*, V.

23. Massimo Cacciari emphasizes the *metanoia* demanded by the gospel in "Il *nomos* dell'amore" (Massimo Cacciari, Ivano Dionigi, et al., *La legge sovrana: Nomos basileus* [Milan: BUR, 2006], 79). This passage reflects Chiara's words: "We felt that all

In a dimension at once theoretical and practical, Chiara explains *giving* as *self-giving*. It means making oneself a "gift" for the other. This produces a renewed reciprocity, and that reciprocity allows legal relationships to be lived out and so become a "space" where we listen to the other's explanations, an "emptiness" that is love because it is able to welcome, *com*-prehend, fully take on board and take into ourselves the life of the other, and out of that mutual comprehension share problems and seek solutions.

It might be useful to use an analogy from research into reparative justice, a perspective necessarily set in a relational context. It concerns a story about the artistry of a potter, and the potter's relationship with emptiness in making a vase. This emptiness, we observe, in effect is what the potter encloses "in the creative act, where it is brought into relation with the fullness that exists in the things of the world." That emptiness is not a "non-thing." Heidegger emphasizes that it is not the clay, but the emptiness it contains that makes a vase, in "its essence as Thing," something capable of holding a liquid. The emptiness thus becomes "necessary, and not simply something that is not there."[24] In Chiara's thought, emptiness is present as the "nothing of self" that cannot be translated as "nothing at all" and that does not turn a person into "no one." It allows and becomes the source for that space of acceptance and sharing possible insofar as it is the "locus" of *being for* the other.

Obviously there is an abyss between the model and the reality. And yet, precisely in that abyss, Chiara perceives the paradigm of gift. It can be seen in the making himself nothing of the One who, in his utter abandonment on the cross, made his own, *with* and *for* each human being, the most unfathomable "emptiness" and, as he cried out his forsakenness, filled it with his presence, and hence with his love. Chiara opens up the way to knock down the walls of separation between equals as well as between those who are different, the walls of division wherever they may be.

Chiara's thought becomes a discourse on justice. Nowadays, despite the rich and extensive literature on the subject of justice, contemporary discourse tends to focus on the innumerable and horrific injustices "beyond" any theory. In Chiara's thought and life, however, injustice takes on the particular meaning of a "wound" in human relations, a social dimension that calls out to the humanity of each person. In seeking an answer to that "forsakenness" of Jesus, which makes God at once *victim* and *condemned*, it is confirmed that in themselves norms are insufficient and in themselves do not grant justice. This is given voice in that "cry," as Chiara wrote in 1944, where "in that place justice is dead,"[25] and the dramas of history confirm that the law can bring about the death of the innocent. Gustav Radbruch has posed the question of the degree of *intolerability* of "unjust" (*Unerträglichkeitsformel*) law, and so emphasizes that the purpose of law, including positive

persons are created as a gift for the one next to them and the one next to them was created by God as a gift for every person," which was the theme of her message to the participants at the International Congress, *Relationships in Law: Is there a Place for Fraternity?* (November 18–20, 2005), http://www.comunionediritto.org/en/eventi-testi/congresso-2005/discorsi-2005/26-messaggio-di-chiara-lubich.html.

24. Taoist thinking is parallel: "Clay is fashioned into vessels; but it is on their empty space, that their use depends. The door and windows are cut out to make a room; but it is on the empty space within, that its use depends. Thus what we gain is something, yet it is empty space that makes it useful" (*Tao T'e Ching*, 11). See also Marco Bouchard and Giovanni Mierolo, *Offesa e riparazione*: *Per una nuova giustizia attraverso la mediazione* (Milan: Bruno Mondadori, 2005), 96–9.

25. Christmas letter to Pierita Folgheraiter, in Chiara Lubich, *Early Letters: At the Origins of a New Spirituality* (Hyde Park, NY: New City Press, 2012), 31.

law, should be to serve justice.[26] More recently, in his latest work Federico Stella, a penologist, begins his analysis by examining the infinite injustices generated by the idea of "throw-away lives." He affirms, "However rare it may be, all the same, none of us can be exempt from taking the step of love and thus of justice"; and he looks to the "first step," which is recognition of the other.[27]

It is thus possible to understand how at the heart of every injustice there is a choice, violent or not, to "exclude otherness."[28] That *giving*, indicated as the criterion of justice that considers the other, in Chiara has the value of love that becomes *giving* and *self-giving*, in principle to everyone. As such it provides content to justice itself, in such a way that justice, often excluded from the variables falling within the purview of the law, returns as a *quality* of its relational basis. Law and justice are then brought back to their common root where justice, "the guardian of relationships," goes beyond mere legal practice to become solidarity and the capacity to identify with every situation of discomfort and pain. It has a universal value because it is the possibility offered to all of *rebuilding* a logic of infinite *free-gift* in relations, almost as if it were guarding, to use Arendt's words again, "the capacity to enter into relationship with the others and above all to put oneself in the other's place."[29] From that abyss, where total injustice is shared with humanity, is born a renewed solidarity with people. For Chiara it is the "way" of "taking the other into oneself" in a new relational bond beyond every kind of forsakenness. No one is excluded from its embrace and the category of "foreign" collapses into "brother" and "sister," people with whom the human family is to be built.

In an interview (2007) Maria Voce has said: "Everything that can be thought of as 'evil' in legal relations cannot have a destructive effect if there is someone who decides to let it be cancelled in their own person, out of love, that is, doing so as a free gift, without asking for compensation, reacting in a constructive manner." The ability to restore the destruction wrought in persons and in relationships thus means to recover the *relational ability* at the heart of every form of common life. It is a matter of working together, within the fabric of society, to regenerate the primary *source* of the law itself, in its relational essence. We can even say that, beyond any coercive intervention, the law becomes a positive instrument. It is not just a "key" to reestablishing our relationships within our

26. This is what Radbruch says in "Gesetzliches Unrecht und übergesetzliches Recht" (1946), and in his *Rechtsphilosophie*: *Vierte Auflage*, ed., Erik Wolf (Stuttgart: K. F. Koehler, 1950), 347–57, in particular, 353. See likewise Giuliano Vassalli, *Formula di Radbruch e diritto penale: Note sulla punizione dei "delitti di Stato" nella Germania postnazista e nella Germania postcomunista* (Milan: Giuffrè, 2001), 4–10 and 279–90. Kelsen takes a different view of all discourse on justice when considering compliance with prescriptions of normative order, in his *Das Problem der Gerechtigkeit* (Vienna: F. Deuticke, 1960).

27. Federico Stella, *La giustizia e le ingiustizie* (Bologna: Il Mulino, 2006), 176–83 and 202–5. See likewise Carlo Maria Martini and Gustavo Zagrebelsky, *La domanda di giustizia* (Turin: Einaudi, 2003), 3–43, as well as Paul Ricoeur, *Amore e giustizia*, ed., Ilario Bertoletti (Brescia: Morcelliana, 2003), 23–45 and Bertoletti, *Postfazione*, 53–9 (Original title: *Liebe und Gerechtigkeit* and *Amour et Justice* [Tübingen: Mohr Siebeck, 1990]). For a recent perspective commenting on the "new" exclusions, see Maria Zanichelli, *Persone prima che disabili: Una riflessione sull'* handicap *tra giustizia ed etica* (Brescia: Queriniana Edizioni, 2012), 25–35 where he considers the latest reflection upon the theory of John Rawls, especially his fundamental *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

28. See Romano, *Due studi*, 18.

29. Papa, *Nati per incominciare*, 10. See, likewise, the introduction of Luca Alici, in his *Il diritto di punire: Testi di Paul Ricoeur* (Brescia: Morcelliana, 2012), 11–28. This is also present in the sphere of the penal system, where, according to several authors, the kind of justice sought is reinterpreted as an attempt to "reconstruct an intersubjective relationship that has been damaged or broken," as Francesco Viola and Giuseppe Zaccaria put it in their *Le ragioni del diritto* (Bologna: Il Mulino, 2003), 67.

common life, supporting and healing social interactions when they break down. It is, additionally and above all, an effective instrument for the avoidance of conflict.

At this point in the legal-penal debate, theories and fundamental issues regarding justice need to be taken into account. This means looking at the contents of penal sanctions and seeking to discern their basis. While *retribution* offers a way of measuring sanctions in response to violations of the law, *reparation*, as a "new way" for justice, could be society's response to a person's humanity, a method of rescuing the other as well as establishing a relationship with the other. Nowadays, from the most recent analyses of justice that seek alternative forms of conflict resolution (ADR, Diversion and Mediation) to Restorative Justice, the search is for solutions characterized by a "reparative approach," which interprets illicit acts as offenses against the person and sees them within a relational context. As far back as the 1980s, Howard Zehr and Mark S. Umbreit sought a response to conflict based on reparatory logic.[30] It was also the method that the Truth and Reconciliation Commission used in its attempt to heal South Africa after the crimes committed under apartheid.[31] This seems to outline a privileged space for dialogue and reciprocity, understood in the context of a new assumption of responsibility, even though prepared instruments for reconciliation may not in themselves bring about genuine reconciliation if openness to the *otherness* of the other is not taken as its necessary measure.

In the relational field, what source can then be drawn upon by restorative justice, if it is not a matter of paying a price but of filling a void and restoring a lost identity? Let us try to reread *reparation* from the standpoint where Chiara grounds us, that is, the place of that "forsakenness" that brings about God's encounter with the very humanity of human beings. Here reparation becomes the *possibility*, offered to each person's responsibility, of rising from any abyss. This happens as the *gift* of a relationship of love that can bring about renewal that heals wounds and reintegrates persons and groups in society. Paolo Borsellino, a magistrate killed by the mafia, said of himself: "I didn't like Palermo, and for that I have learned to love it. Because true love is a matter of loving what we don't like in order to change it."[32]

30. "Forgiveness sets aside; the gift of reparation brings back together and connects," according to Bouchard and Mierolo, *Offesa e riparazione*, 67; see likewise Paul Ricoeur on "restorative and reconstructive justice" in *Il diritto di punire*, ed., Luca Alici, 85–94. Among the many studies that examine the topic from an Anglo-Saxon perspective, see Mark S. Umbreit, *The Handbook of Victim Offender Mediation* (San Francisco: Jossey-Bass, 2001), in particular xxv-xxxix.; for an overview, see John Harding, "Reconciling mediation with criminal justice" and Burt Galaway, "Prospects," in eds., Martin Wright and Burt Galaway , *Mediation and Criminal Justice*: *Victims, Offenders and Community* (London: Sage, 1989), 27–42 and 270–75. The topic, which is now also widely discussed in Italy, has been recently considered by Federico Reggio, *Giustizia dialogica*: *Luci e ombre della restorative justice* (Milan: Franco Angeli, 2010), which also includes a full Italian biography.

31. The Truth and Reconciliation Commission was set up in 1995 with the Promotion of National Unity and Reconciliation Act *34*. For a general description and history see Anna Maria Gentili and Andrea Lollini, "L'esperienza delle commissioni per la verità e la riconciliazione: Il caso sudafricano in una prospettiva giuridico-politica," in, eds., Giulio Illuminati, et. al, *Crimini internazionali tra diritto e giustizia: Dai Tribunali Internazionali alle Commissioni Verità e Riconciliazione* (Turin: Giappichelli, 2000), 163–209. A similar approach was taken in the painful situation in Peru. See Gabriella Citroni, *L'orrore rivelato: L'esperienza della Commissione della verità e riconciliazione in Perù: 1980–2000* (Milan: Giuffrè, 2004), in particular 119–30.

32. This statement is found at the top of the website *Paolo Borsellino e l'agenda rossa*, http://www.19luglio1992.com/index.php?option=com_content&view=article&id=1676:paolo-borsellino-e-lagenda-rossa&catid=17:libri&Itemid=29.

To conclude, let me cite Chiara's unpublished message in Rome to the 2005 International Congress for Practitioners and Scholars of Law:

> I would like to see this regulative function [of law] animated by the new commandment of mutual love, so it can lead to the full realization of persons and of the relationships to which . . . persons give life. In this way, in its specifically normative function, as also in the daily practice of all the relations entailed by legal life . . . you will be able to contribute to making humankind become a family.

It may seem like a dream, but in reality it is a new understanding from which law is also reinterpreted. Law is no longer considered an instrument for maintaining boundaries, excluding some and including others, but as a bridge. This may preserve an objective distance, but only in order to make it practicable, possible to overcome otherwise insuperable voids.

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