THE ITALIAN CONSTITUTION: A PERSONALIST CONSTITUTION

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Abstract

After briefly introducing the essential and original features of the personalist principle that is embraced by the Italian Constitution, the paper considers the work of the Constituent Assembly in which, in spite of its undoubtedly Catholic origin, the substance of the personalist principle was fully endorsed by the other ideological and cultural groupings present within the Assembly. It then goes on to examine the potential of the principle and how it has been understood and implemented in Italy within republican legislation, as well as constitutional case law.

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1. Introduction[1]

In a recent, profoundly insightful, book in defence of social constitutionalism, one of the most renowned Italian scholars of constitutional and comparative law evokes the provisions of the Italian Constitution of 1 January 1948 – in an attempt to save them from the fate of oblivion to which they are currently exposed – that impose inderogable duties of solidarity on all persons under the legal order, and that oblige public authorities to combat all forms of inequality and to remove barriers to the full development of each human person[2].

According to the author, the message that the Italian Constitution delivers to current generations and the wider world is that "we can't save ourselves on our own". This is "the endowment with which we appear on the global scene, our national visiting card"[3].

An essential element, and perhaps the core, of this precious legacy left to the world by the Framers of the Italian Constitution is the personalist principle.

Unlike the other fundamental principles set out in the Constitution, each of which is specifically enunciated in one of its first 12 articles, the personalist principle is not all contained within the large perimeter of Article 2[4]. On the contrary, it is expressed in several passages of the text and holds up the entire constitutional architecture, so much so that some have asserted – and rightly so – that the Constitution itself is "personalist" as a whole, and not only in terms of this or that individual provision[5].

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[1] This paper is a translated, modified and updated version of the article entitled The personalist principle due to be published in forthcoming M. Benvenuti, R. Bifulco (eds.), *Trattato di diritto costituzionale italiano*, II: *I princìpi fondamentali* (2023)

[2] T. Groppi, *Oltre le gerarchie. In difesa del costituzionalismo sociale* (2021).

[3] T. Groppi, *Oltre le gerarchie. In difesa del costituzionalismo sociale*, cit. at 1, 91.

[4] Article 2 It. Const.: "The Republic recognises and guarantees the inviolable rights of the person, as an individual and in the social groups within which human personality is developed. The Republic requires that the fundamental duties of political, economic and social solidarity be fulfilled".

[5] A. Ruggeri, *Il principio personalista e le sue proiezioni*, in L. Ventura, A. Morelli (eds.), *Principi costituzionali* (2015), 168 and 195 et seq. Similarly, according to A. VEDASCHI, *Il principio personalista*, in L. Mezzetti (ed.), *Diritti e doveri* (2011), 222, the personalist principle is a value with reference to which also the other fundamental principles contained in the Constitution should be interpreted.

Besides, those who argued in favour of the introduction of the personalist principle within the Constituent Assembly elected on 2 June 1946 sought to achieve precisely this outcome.

This clear intention was stated by one of the most ardent supporters of the principle, the Christian Democrat La Pira. In his lengthy address to the Assembly on the "fundamental problems relating to the construction of the new constitutional architecture", he concluded by declaring that he wished to propose to his colleagues the overall design of a "human Constitution", that is a "home" "made for people" in which each individual provided "support" and acted as the "cornerstone" for the entire edifice[6].

This paper will be structured as follows.

After briefly introducing the essential and original features of the personalist principle that is embraced by the Italian Constitution (section 2), it will consider the work of the Constituent Assembly in which, in spite of its undoubtedly Catholic origin, the substance of the personalist principle was fully endorsed by the other ideological and cultural groupings present within the Assembly[7] (section 3). The paper will then go on to examine the potential of the principle (section 4) and how it has been understood and implemented within republican legislation (section 5) as well as constitutional case law (sections 6 and 7).

2. The essential characteristics of the personalist principle embraced within the Italian Constitution of 1 January 1948

At the time of the Constituent Assembly, as moreover is still the case, personalism was a highly articulated school of thought. Thus, before dealing with the origin of the principle, it is appropriate to

[6] La Pira 11.3.1947. The verbatim report of every sitting of the Constituent Assembly can be read at *https://storia.camera.it/lavori/transizione/leg-transizione-costituente/faccette/all#nav*.

[7] Three-quarters of the Constituent Assembly comprised representatives of the three main anti-fascist parties, i.e. Christian Democrats, Socialists and Communists (VV.AA., *Constitutional Law in Italy*, 3rd ed. (2021), 35), and percentage of votes around 5 per cent or below were obtained by other parties. For more details, see M. Cartabia, N. Lupo, *The Constitution of Italy. A Contextual Analysis* (2022), 9-10.

identify the characteristics of personalism that were effectively incorporated into the text of the republican Constitution.

Constitutional scholars stress above all the aspect of the – logical, historical and axiological – priority of the human person over any constituted public authority.

This aspect is unequivocally apparent within the wording of Article 2 of the Constitution, in which it is asserted that the Republic "recognises" inviolable human rights as pre-existing, before even guaranteeing them[8].

However, it should be borne in mind that the prior status and primacy of fundamental rights vis-a-vis state authorities are not exclusive either to the personalist principle or to the Italian Constitution, but have rather underpinned Anglo-American constitutionalism since the outset, as well as all European constitutionalism from the post-War era. As such, one can only agree with those who assert, from this perspective, that the novelty and merit of Article 2 consisted simply in the fact that it bridged the gap between the human rights traditions of continental Europe and the common law. It thus turned the page on an era which, since the revolutions of the end of the eighteenth century, had juxtaposed the two traditions, banishing them to mutual isolation[9].

The contours to the personalist principle are rather set out in other provisions of the Constitution, which vest it with an indubitable original streak.

a) Article 2 of the Constitution itself provides, first and foremost, a genuine and entirely new *definition* of the "person", i.e. the human being, from which the personalist principle takes its name: the "person" is defined both "as an individual" and as a human being "in the social groups within which human personality is developed".

Article 3(1) of the Constitution then goes on to qualify the person vested with the right to non-discrimination in terms of a human

[8] See *supra*, at 3.

[9] A. Baldassarre, *Diritti della persona e valori costituzionali* (1997), 2 et seq.

being in relation to others, because it premises the principle of equality before the law on the assertion of the equal "social" dignity of all[10].

Moreover, in keeping with the notion of the individual as a "social man"[11], the structure of part I of the Constitution presents the constitutional rights and duties listed within it in the form of "relations" ("civil", "ethical and social", "economic" and "political" "relations", as is reflected in the names of the four titles to part I) and thus as *human* relations, which must then be modelled on the principle of solidarity. Indeed, according to some authors it is the "combination" of the personalist principle and the principle of solidarity that "defines the concept of the person as a relational creature"[12]. However, whilst the close and practically inseparable links among all of the various fundamental principles underpinning the republican Constitution must be recognised, it is preferable to distinguish the definition of the person in terms of social or relational human being, and hence to ascribe it in full to the personalist principle, leaving for the principle of solidarity the task of sketching out the characteristics that relations among people must have.

b) The other original characteristic feature of personalism embraced by the Framers lies in the fact that it stipulates the full realisation of the individual as defined in Article 2 of the Constitution as the aim of all public action. This entails the full realisation not of human beings understood in an abstract sense but rather of each specific individual person in his or her singular uniqueness and diversity, considered with reference to actual life circumstances and the network of social relations of which the individual is a member.

Article 3(2) of the Constitution in fact provides that it is the task of the Republic to favour conditions for achieving the "full development"[13] of the human person, which Article 2 considers both

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[10] Article 3, para. 1, It. Const.: "All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions".

[11] G. Ferrara, *La pari dignità sociale (Appunti per una ricostruzione)*, in *Studi in onore di Giuseppe Chiarelli*, II (1974), 1099.

[12] E. Rossi, *La doverosità dei diritti: analisi di un ossimoro costituzionale?*, 9 Rivista del Gruppo di Pisa (2019), 54.

[13] Article 3, para. 2, It. Const.: "It is the duty of the Republic to remove the economic and social obstacles which by limiting the freedom and equality of citizens prevent

as an individual, and also within the context of those networks of social relations that enable each and every human person to develop.

Article 4 of the Constitution, in turn, insists on this feature in that, in defining "work" (which is established as the foundation for the entire Republic)[14] as both a right and a duty which all people are obliged to perform "according to their own possibilities and choices", it considers "work" as being those activities and functions that are capable of achieving the material or spiritual progress of society only through the realisation of the person, and never to the their detriment[15]. Moreover, it must always be recalled that precisely this definition of "work" clarifies the meaning of its stipulation as a basis for the Republic (Article 1): in fact, the centrality of the human person requires democracy to be construed in new terms as "a democracy where, having cast aside any individualistic conception, the human person is called upon to participate through work in the life of everybody[16].

3. The Constituent phase

Albeit with different focuses and nuances, all scholars – philosophers, historians, political sciences and jurists – who engaged with the personalist principle during the Constituent phase agreed on a number of fixed points of reference in terms of its origin, which must be taken for granted here.

These include at least the following aspects: a) that the choice to incorporate the personalist principle into the republican Constitution was a clear and informed choice; b) that the initiative to do so was taken and persistently pursued by the Catholic block; c) that the Catholic members of the Constituent Assembly drew on French thinking, including in particular on Maritain and Mounier; d) that the

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the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country".

[14] Article 1, para 1, It. Const.: "Italy is a Democratic Republic, founded on work".

[15] Article 4, It. Const.: "[1] The Republic recognises the right of all citizens to work and shall promote such conditions as will make this right effective. [2] Every citizen has the duty, according to capability and choice, to perform an activity or function that contributes to the material or spiritual progress of society".

[16] T. Groppi, *Menopeggio. La democrazia costituzionale nel XXI secolo* (2020), 81.

strategy pursued by Christian Democrats during the work of the Constituent Assembly was to purify their proposal of any excessive ideological baggage, with the aim of achieving consensus with the Left; e) that this Catholic proposal, once stripped of all rhetoric, was not reworked into a compromise solution with the Communists and Socialists, but was rather fully endorsed as it stood[17]; f) that, despite Liberals' low level of involvement in that debate[18], the Framers were essentially unanimous in embracing the personalist principle[19]; and g) that most members of the Constituent Assembly regarded the personalist principle without any doubt as constituting the keystone, alongside the democratic principle, of the entire constitutional system.

There is no doubt that the personalist principle was introduced by the Catholic block. Indeed, if the Christian Democrats were the only party, out of all the anti-fascist parties, that came to the Constituent Assembly with a general political and constitutional policy[20], it must also be said that the backbone of this policy was specifically the personalist principle.

On the other hand, it is a matter of debate what kind of relationship there was with French philosophical thinking on "communitarian personalism"[21]. Were the Italian Framers directly influenced by the French theory, or did the French theory simply happen to be consistent with the prevailing sentiment in Italy?

There are several factors to suggest that the latter was the case. The French and Italian Catholic thinking that subsequently fed in to the work of the Constituent Assembly was in both cases aligned with the social doctrine enunciated by the Catholic Church in the 1931 encyclical *Quadragesimo anno*[22]. Italian views in particular were

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[17] L. Basso, *Il Principe senza scettro. Democrazia e sovranità popolare nella Costituzione e nella realtà italiana* (1958), 125.

[18] E. Rossi, *Art. 2*, in R. BIFULCO, A. CELOTTO & M. OLIVETTI (eds.), *Commentario alla Costituzione*, I (2006), 40.

[19] N. Occhiocupo, *Liberazione e promozione umana nella Costituzione. Unità di valori nella pluralità di posizioni* (1988), 55.

[20] D. Nocilla, *I cattolici e la Costituzione: tra passato e futuro* (2009), 26.

[21] B.A. Gendreau, *The Role of Jacques Maritain and Emmanuel Mounier in the Creation of French Personalism*, 8 The Personalist Forum, Supplement: Studies in Personalist Philosophy. Proceedings of the Conference on Persons (Spring 1992), 97-108.

[22] P. Pombeni, *The ideology of Christian Democracy*, 5 J. Political Ideol. (2000), 296.

inspired by the radio messages broadcast by Pius XII during the Second World War[23] in which, anticipating the characteristics of the future post-War polity, the Pope had insisted on the central importance of the human person, identifying a close link between it and democracy[24]. French and Italian Catholic personalists shared a common understanding of the political crisis that had resulted in the totalitarian regimes of the early twentieth century. These were regarded by all of them as the inevitable consequence of the liberal regimes that had left free rein to capitalism and disregarded the fact that the state's task should be to create the spiritual and material conditions necessary for the development of every human being[25]. As a result, these economic liberal views were also to be cast aside, along with totalitarianism.

There was a shared view that people could only live and develop within the natural communities in which they found themselves and that, without these communities, "the individual is nothing"[26].

Moreover, Maritain and some of the most influential Italian Christian Democrat intellectuals within the Constituent Assembly, such as the "little professors" Dossetti, La Pira and Moro, also referred back to the thinking of Thomas Aquinas[27]. In any case, although it was censored by the fascist regime, Maritain's 1936 book *Humanisme intégral* nonetheless became known in Italy thanks to authoritative Vatican figures such as Cardinal Montini (the future Pope Paul VI), who gave a copy of it to La Pira[28]. Handwritten extracts from the book also circulated in Florence, which were discussed during meetings held at the Florentine convent where La Pira lived[29]. Moreover,

[23] At *http://w2.vatican.va/content/vatican/it.html*.
[24] G. Campanini, *Dal Codice di Camaldoli alla Costituzione. I cattolici e la rinascita della democrazia*, 57 Aggiornamenti Sociali (2006), 402-403.
[25] E. Mounier, *Révolution personnaliste et communautaire*, (1932-1935); J. Maritain, *Humanisme intégral* (1936).
[26] E. Mounier, *Révolution personnaliste et communautaire*, cit. at 24.
[27] F. Pizzolato, *Finalismo dello Stato e sistema dei diritti nella Costituzione italiana* (1999), 54 et seq. and 75 et seq.
[28] G. Campanini, *Dal Codice di Camaldoli alla Costituzione. I cattolici e la rinascita della democrazia*, cit. at 23, 400 et seq.
[29] J.D. Durand, *Giorgio La Pira-Jacques Maritain: dialogo per un'Europa cristiana (giugno-luglio 1946)*, in P.L. Ballini (ed.), *Giorgio La Pira e la Francia* (2005), 5.

Mounier's *Declaration of the rights of people and communities* of 1941 (referred to by La Pira as the *Mounier Project*), later published in the magazine Esprit before the end of the war[30], was well known and appreciated within the same circles. Another fact, considered by some authors to be highly significant, is that precisely during the period in which the Constituent Assembly was sitting, Maritain himself was serving as the French Ambassador to the Vatican City (1945-1948), and thus had the opportunity to establish personal relations most certainly with La Pira himself, although probably also with other Christian Democrat members.

The Catholic idea of a new state can be found in its first embryonic form in the *Camaldoli Code* drawn up in July 1943 at the sixth gathering held at the Benedictine monastery in Camaldoli by a group of Catholic graduates led by Bernareggi, the graduates' chaplain at the association Azione Cattolica Italiana, which still exists today. It was completed in Rome under the direction of the Catholic Institute for Social Activity, thanks to contributions by, amongst others, intellectuals who would subsequently come to prominence in the Constituent Assembly, including La Pira and Moro, after which it was published in the spring of 1945[31].

The document sets out explicitly the two defining features of Catholic "communitarian personalism", which would later develop into the personalist principle embraced by the new Constitution. These were specifically the conception of the person as a human being immersed in relations with other people, and secondly the purpose of the state, which was considered to consist in the full development of each person, defined in these terms. As regards the first characteristic, the document opens in section 1 by asserting that "man is an essentially social being: his spiritual requirements and bodily needs can only be satisfied through cohabitation", whilst section 3 goes on to clarify that "society is not a numerical unity or the simple sum of its constituent individuals", but "is rather the organic union of people, families and groups sharing the same end, that is the common good".

[30] E. Mounier, *Faut-il refaire la Déclaration des Droits? Projet d'une Déclaration des Droits des personnes et des collectivités*, 13 Esprit (1944).
[31] VV.AA., *Per la comunità cristiana. Principi dell'ordinamento sociale a cura di un gruppo di studiosi amici di Camaldoli* (1945), *passim*.

As regards the second characteristic, sections 4 to 6 clarify that "society organised into a state" is "a unity of order" and that "the goal of the state is to promote the common good, to which all citizens may contribute in line with their aptitude and circumstances"[32].

Turning now to the work of the Constituent Assembly, agreement concerning the personalist principle was reached within the 1st Sub-Committee of the "Committee for the Constitution", comprised of 75 out of 556 deputies, which was responsible for considering the rights and duties of citizens.

The Christian Democrats had appointed to this Sub-Committee some of their most astute intellectuals–, such as Dossetti, La Pira and Moro, as well as Tupini, who however sought to remain largely equidistant from the parties as the Sub-Committee's chairman[33].

Left-wing parties also nominated heavyweights, and were represented by Togliatti and Iotti for the Italian Communist Party and Basso for the Italian Socialist Party of Proletarian Unity.

It is interesting to note, first and foremost, that the Catholics drew inspiration from Maritain also, so to speak, in terms of the method by which the French philosopher had suggested that Christians proceed with their "temporal mission", namely the "work of transforming the social regime" inspired by the gospels[34].

As the Christian Democrats in the 1st Sub-Committee wanted to ensure that the personalist principle was accepted by all, they followed each of the steps suggested by the philosopher when engaging and cooperating with left-wing parties in the shared historical endeavour of building a new society[35]. This involved: a) *admitting* that Communism was rooted in the same Christian ideal of communion to be achieved in this world; b) *acknowledging* that Marx had been right in his criticism of capitalist society when arguing that nothing is more

[32] VV.AA., *Per la comunità cristiana. Principi dell'ordinamento sociale a cura di un gruppo di studiosi amici di Camaldoli*, cit. at 30.
[33] P. Pombeni, *Il gruppo dossettiano*, in R. Ruffilli (ed.), *Cultura politica e partiti nell'età della costituente*, I (1979), 428.
[34] J. Maritain, *Humanisme intégral*, cit. at 24.
[35] L. Elia, *Maritain e la rinascita della democrazia. Schema per una ricerca*, 73 Studium (1977), 586; S. Illari, *La partecipazione di Giuseppe Dossetti ai lavori dell'Assemblea costituente e la formazione graduale delle sue convinzioni in tema di Costituzione*, 61 Jus, (2014), 488.

alien to the Christian spirit than a society in which life is defined exclusively in terms of the interplay between specific interests; c) *honouring* the "sincere sentiments"[36] of many communists who, aside from their adherence to party discipline, did not profess Soviet atheism (a metaphysical or religious ideal at odds with the Christian ideal), but rather embraced an economic and social ethics, or even nothing more than a toolkit for transforming the economic system[37]; d) finally, *understanding* that "Communists are not the same as Communism" and – a step that was particularly easy for Catholic members of the Constituent Assembly, who had fought in the Resistance alongside members from left-wing parties – that "they are absolutely deserving, having paid the price in blood for the liberation of all, of the right to participate in the work of reconstruction as fellow comrades in the struggle"[38].

It was thus that on 30 July 1946 – at the start of the Assembly's work – the 1st Sub-Committee discussed a "systematic list" of (numerous) rights, all of which were termed "freedoms", and (only a few) duties, which had been prepared by a small working group. Rather unexpectedly, Christian Democrats and left-wing members immediately agreed on some points, which would not subsequently be departed from. First of all, the Socialist Basso proposed that the schematic structure be changed in order to avoid "the impression that individualism alone should be stressed"[39]. This proposal was immediately followed up by the Christian Democrat La Pira, who agreed on the need to frame issues not in terms of freedoms but rather as "rights of the human person" and of the communities, "in which the human person develops himself"[40]. Chairman Tupini charged the unlikely pair of Basso and La Pira, united by their steadfast rejection of liberal individualism, with the task of drafting a report on "principles of civil relations[41], to be examined by the Sub-Committee when it resumed its work after the summer break.

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[36] J. Maritain, *Humanisme intégral*, cit. at 24.
[37] J. Maritain, *Humanisme intégral*, cit. at 24.
[38] J. Maritain, *Christianisme et démocratie* (1942).
[39] Basso 30.7.1946.
[40] La Pira 30.7.1946.
[41] Tupini 30.7.1946.

On the same day another improbable pair started to work together, comprised of Togliatti, the Communist leader, and Dossetti, an important exponent of the Christian Democrats, who by contrast agreed on the need to give "historical solidity"[42] to the constitutional proclamation of rights[43]. And it was precisely on the tangible historical level, and not on the doctrinaire level, that the positions of the two groups ultimately converged on all of the points mentioned above (section 2).

When work resumed on 9 September 1946, Chairman Tupini decided to start specifically with a discussion of the principles applicable to civil relations, taking the view that this issue was preliminary to all others. The two reports, which operated as a frame of reference for the 1st Sub-Committee, followed completely different styles: the La Pira report contained a lengthy and learned presentation of the theoretical foundations for the part of the future Constitution dedicated to rights; on the other hand, the Basso report simply provided a list of articles, each followed by a very brief explanation.

It is often recalled that, in his very long report, La Pira illustrated the outline of the Catholic proposal of underpinning the entire constitutional architecture with the personalist principle, providing numerous references to French Catholic personalism[44].

However, it is important not to overlook the fact that Basso's report sets out the position on which the left-wing parties spontaneously converged, and which overlaps with Catholic personalism[45]. This was the embryo of what would subsequently become the principle of substantive equality, which was indubitably imbued with a personalist approach from the outset, as is clear from the text submitted for discussion: "it falls to the collectivity to eliminate all social and economic obstacles that, in *de facto* limiting freedom and equality among individuals, prevent human persons from achieving their full dignity, and in developing to the full in physical, intellectual, moral and material terms". In his brief concluding remarks, Basso pointed out that he regarded this provision as the basis for the entire

[42] Tupini 30.7.1946.
[43] Togliatti and Dossetti 30.7.1946.
[44] La Pira 9.11.1946.
[45] Basso 9.11.1946.

Constitution, in the same way as La Pira placed Catholic personalism at the heart of his own parallel proposal: "it is a norm-principle, which will then provide the key to all other norms contained in the Constitution concerning work, business, ownership and public services. It is particularly advisable in this respect, and it lends the Constitution a presentational clarity and a basic solidity that cannot be found elsewhere".

Returning now to the weighty La Pira report, its reasoning appears to contain the following steps. First of all, it is necessary to *abandon* the idea of "reflexive" rights granted by the state, which is typical of a totalitarian regime, and *return* to the "relationship between the individual and the state as previously construed within western constitutions", in which the state was (previously in the past) conceived of "in terms of the individual and the natural rights of the individual". Here La Pira proposed a synthesis which would often be taken up by commentators as a slogan: '*the state for the person and not the person for the state*': this is the unavoidable premise of an essentially democratic state". However, it is important to stress that this slogan was traced back by La Pira to the preamble to the 1789 Declaration of the Rights of Man and the Citizen, as confirmation of the fact that the prior status of rights to public authority was – rightly or wrongly – regarded by the Constituent Assembly as a characteristic of democratic constitutionalism *tout court*, to which it was simply necessary to return, and not a novelty of the future Constitution of the Italian Republic. Secondly, in an analogous manner to the *Mounier Project* and in keeping with social Catholicism and contemporary Socialism, it was indispensable to *add* the recognition of and protection for the "essential rights of natural communities through which human personality gradually emerges". This is because "the violation of the essential rights of these communities constitutes a violation of the essential rights of human persons and undermines or even renders illusory the assertions of freedom, autonomy and social solidity contained in declarations of rights". Thirdly, it was necessary to *recognise* the "spiritual, free and social nature of man". Finally, it was fundamentally important to *identify* the purpose of the Constitution as being the "protection of the rights of human persons and natural communities, into which the individual organically and progressively integrates and fulfils himself".

The discussion that followed first confirmed that all parties agreed to reject the fascist idea of "the person for the state" and to embrace the opposite idea of "the state for the person". However, it also laid bare a tangible irritation with the "learned report"[46] presented by La Pira, who was accused of having invoked "new testament canons" to insist on the value of the human person, thereby denying all prior theorisation previously conducted within moral and civic research on the same issue[47]. He was also accused of an "excess of ideology", not only philosophical but also religious, which risked "creating a schism at the heart of the Nation"[48].

Dossetti then took the floor. After noting the unsuccessful "attempt" made by La Pira, which had been too heavily skewed in favour of Catholic ideology, he tried to sketch out the contours of an "ideology common to all", finding them in a rejection of the "fascist view of the dependence of the citizen on the state" and the assertion of the "prior status of the individual vis-a-vis the state", who "is fully realised within the communities into which the person is integrated"[49]. Togliatti then spoke immediately after him, declaring that "the comments made by the Honourable Dossetti offer broad scope for agreement", resulting "from a shared political experience, even if not a shared ideological experience": "he might disagree with the Honourable Dossetti in defining human personality; however, he accepts that to guarantee the fullest and freest development of the human person may be indicated as the aim of a democratic regime"[50].

At this point, Dossetti steered the discussion in a new direction, formulating his famous agenda which, whilst not subsequently being discussed or put to a vote, may be regarded as a genuine manifesto of that personalism on which Christian Democrats and left-wing parties agreed.

It is thus important to cite it here in full: "having examined the possible systematic frameworks for a declaration of human rights; having excluded the framework that is inspired by a purely

[46] Mastrojanni 9.9.1946.
[47] Marchesi 9.9.1946.
[48] Togliatti 9.9.1946.
[49] Dossetti 9.9.1946.
[50] Togliatti 9.9.1946.

individualist vision; having excluded the framework inspired by a totalitarian vision, which traces the allocation of the rights of individuals and basic communities back to the state; the Sub-Committee concludes that the only framework that is genuinely consistent with historical requirements, which the new statute of a democratic Italy must satisfy, is the one that: a) recognises the substantial priority of the human person (understood in terms of the fullness of his values and needs, not only material but also spiritual) vis-a-vis the state, and the duty incumbent upon the latter to act in the service of the former; b) recognises at the same time the necessarily social nature of all persons, who are destined to complete and fulfil one another through reciprocal economic and spiritual solidarity: first and foremost within various intermediate communities arranged according to a natural scale (family, territorial, professional, religious communities, and so on), and thereafter, where those communities are not enough, through the state; c) accordingly affirms the existence both of fundamental human rights and also of rights of communities, which are prior to any grant of rights by the state"[51]. Chairman Tupini was able to conclude, at this stage, asserting that "irrespective of the distant ideological premises, everyone can agree on the value that must be given to the human person"[52].

Once agreement had been reached, there was no going back. From this point onwards, debate among the parties would be focused almost exclusively on the wording of the text, first within the Sub-Committee[53] and later within the plenary Assembly[54].

The broad discussion (once again) by La Pira in the Assembly[55] on 11 March 1947 added perhaps only one new element, that is the explicit reference to the thought of Thomas Aquinas. From this he derived the conception of the human person "as a transcendent value outside the body of society", as a result negating "statalism" and the

[51] Tupini 9.9.1946.
[52] Tupini 9.9.1946.
[53] From 11 September 1946 onwards, the date on which the provisions that would subsequently become Articles 2 and 3 in the draft agreed upon between Basso and La Pira were discussed together.
[54] In particular, on 24 January 1947, on the text drawn up by the Drafting Committee, and also later between 4 March 1947 and 24 March 1947.
[55] La Pira 11.3.1947.

theory of reflex rights whilst also more explicitly insisting on the fact that "this human person is not isolated: he has a real relationship, as the scholastics said – a real relationship, not only a voluntary relationship – with others"[56].

Once again, annoyance was caused not by the content of the Catholic proposal, but rather by the "metaphysics"[57] in which La Pira shrouded it. However, when speaking in the Assembly immediately after La Pira, Togliatti defended his proposal (aside from any possible criticism concerning the way in which it had been presented) and declared that, on some of the fundamental principles, the solution reached had not been a compromise with the usual give and take, but that they had rather "sought to achieve consensus; that is to identify the potential common ground on which different ideological and political opinions could converge, and which was sufficiently solid to act as a foundation for the Constitution"[58]. He went on to clarify that this "confluence" of the two major ideologies – Catholicism and Socialism-Marxism – had been reached precisely on the issue proposed by La Pira, since also "Socialism and Communism strive to achieve the full valorisation of the human person"[59].

A few days later, on 13 March 1947, Moro, another prominent Christian Democrat, once again addressed the necessarily social nature of the human person: "when we talk about the autonomy of the human person, we are evidently not thinking about the individual isolated in his egotism and closed inside his own world. We do not mean an autonomy that represents splendid isolation. We want links"[60].

Finally, on 24 March 1947, the day on which some of the fundamental principles, including Articles 2 and 3 of the future Constitution, were definitively approved by the Constituent Assembly, Moro insisted on the same aspect, arguing that it enjoyed "almost unanimous consensus"[61], and finished the work of La Pira, stressing the close link between the personalist principle and the

[56] La Pira 11.3.1947.
[57] Vinciguerra 13.3.1947.
[58] Togliatti 11.3.1947.
[59] Togliatti 11.3.1947.
[60] Moro 13.3.1947.
[61] Moro 24.3.1947.

democratic principle with his famous motto "man is society"[62]. Indeed, he said that "the state genuinely ensures its democratic nature, premising its system on respect for every man, considered in the multiplicity of his expression, man who is not only a single entity, who is not only an individual, but who is society in its various forms, society that does not confines itself within the state. Human freedom is fully guaranteed if man is free to form social groupings and to develop within them. The truly democratic state recognises and guarantees not only the rights of the isolated man, who would in reality be an abstraction, but also the rights of the man associated according to a free social vocation"[63].

It was thus easy for the Chairman of the "Committee for the Constitution" Ruini to conclude shortly before the vote that, in relation to this issue, "we have now achieved a unanimous position, which is not a compromise"[64].

4. The constitutional significance of the fundamental principle

The proposals made by the Christian Democrat group around Dossetti were thus almost all accepted by the left-wing parties and were incorporated into the text of the Constitution (see above section 3). Only two aspects of Catholic personalism were refused, and there is hence no trace of either in the Constitution. First of all, the endorsement of Catholic ideology initially proposed by La Pira was rejected. Consequently, the Constitution does not contain any reference whatsoever to the (spiritual) nature of the human person and the organic conception of society, according to which the human personality develops through its "organic membership"[65] of the various social communities in which each person is naturally included. Secondly, La Pira's idea (initially supported by Dossetti) of "freedom

[62] G. D'Amico, *Stato e persona. Autonomia individuale e comunità politica*, in F. Cortese, C. Caruso & S. Rossi (eds.) *Immaginare la Repubblica. Mito e attualità dell'Assemblea Costituente* (2018), 107.
[63] Moro 24.3.1947.
[64] Ruini 24.3.1947.
[65] P. Pombeni, *Individuo/persona nella Costituzione italiana. Il contributo del dossettissimo*, 12 Parolechiave (1996), 209.

to", under which the very freedoms vested in the individual should only be considered to be guaranteed under the Constitution if and insofar as aimed at the "full perfection of the human person, in harmony with the requirements of social solidarity and in such a manner as to enable the expansion of the democratic regime"[66] was also rejected due – as Dossetti himself admitted – to substantive disagreement on this issue.

By contrast, the two features of the necessary social nature of the human beings and the state's purpose of ensuring the full development of every person, understood as a "social man", are both fully apparent within the Constitution (see above section 2).

However, the republican legal order took some time to embrace these. The very same literature that included the personalist principle within the list of fundamental principles immediately after the democratic principle, and in close conjunction with it, found it difficult to progress beyond the notion that, in asserting it, the Constitution was simply providing an indication of the value of the human beings and of their dignity and inviolable rights[67] as a basis for the republican Italian state.

During the first few years after the entry into force of the Constitution, even the most authoritative scholars of constitutional law did not sufficiently emphasise the fact, which would gradually prove to be crucial in establishing the practical significance of the personalist principle, that when referring to the "person" the Constitution did not intend to refer to the individual in the abstract, but rather by contrast the "social person"[68]. Only a few scholars, such as Vezio Crisafulli, immediately appreciated that, as a result of the personalism embraced within the Constitution, public action would have to apply to the "entire man", i.e. "the concrete man, specifically conditioned by his real situation within civil society"[69].

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[66] La Pira 2.10.1946. See M. Cartabia, *La fabbrica della Costituente: Giuseppe Dossetti e la finalizzazione delle libertà*, 37 Quaderni costituzionali (2017), 473.

[67] C. Mortati, *Istituzioni di diritto pubblico*, 9th ed. (1976), 158.

[68] S. Rodotà, *Il diritto di avere diritti* (2012), 149-150, recalling A. Baldassarre, *Diritti della persona e valori costituzionali*, cit. at 8, 47 et seq.

[69] V. Crisafulli, *La sovranità popolare nella Costituzione italiana (note preliminari)* (1954). Another exception, at that time, was A. Amorth, *La Costituzione italiana. Commento sistematico* (1948), 41-42.

Stefano Rodotà recalls in this regard that it was precisely with the rediscovery of "tangible man" that the Italian legal system succeeded in the difficult task of "reinventing the person"[70] after the experience of totalitarian government, the Second World War and the Holocaust. In fact, the catastrophe of totalitarianism and war – as Capograssi had been the first to recognise in his 1950 pamphlet on "law after the catastrophe" – called for the "reintegration into the legal order of human life in all of its effective content"[71].

There is no doubt that, during the twentieth century, the construction of the "abstract subject" had performed the fundamental task of "formally freeing the individual from the servitude of class, occupation, economic status and gender, on which hierarchical society and inequality was based"[72]. However, the "tangibility of the real"[73] impinges upon the framework set out by formal equality, requiring a new notion of legal subject to be sought after. Accordingly, the constitutional notion of person finally enabled the legal system "to give significance to the materiality of the relational network into which each person is embedded, as well as the social relations characterising them"; moreover, it was thanks to the reference to the person that different subjective figures embodying the human condition in its entirety and in its full complexity penetrated into the legal order and took on self-standing significance[74].

Ultimately, within the republican legal order the personalist principle performed the historical function of "shifting" the decisive moment for the attribution of rights "downwards, towards real society, with its effective baggage of contradictions and inequalities"[75]. In addition, the principle also performed the task of linking the vesting of fundamental rights in the human person *tout court* with the effect of rejecting the notion that rights were vested in citizens only[76]. The personalist principle thus opened up a "twofold" rupture in the legal

[70] S. Rodotà, *Il diritto di avere diritti*, cit. at 67, 148.
[71] G. Capograssi, *Il diritto dopo la catastrofe*, 1 Jus (1950), 198.
[72] S. Rodotà, *Il diritto di avere diritti*, cit. at 67, 144.
[73] S. Rodotà, *Il diritto di avere diritti*, cit. at 67, 147.
[74] S. Rodotà, *Il diritto di avere diritti*, cit. at 67, 152-153.
[75] M. Fioravanti, *Costituzione italiana. Art. 2* (2018), 40 et seq. and 58 et seq.
[76] M. Fioravanti, *Costituzione italiana. Art. 2*, cit. at 74, 40.

order: "one in an upward, universalist direction and the other on a downward trajectory, towards the tangibility of social relations"[77].

In addition to these two breaches imposed by the personalist principle, one upward and one downward, there was also a third breach, as regards the possibility of expanding the catalogue of inviolable rights protected by the Constitution.

Strictly speaking, this issue, which has been widely objected to within doctrinal debate – that is whether Article 2 of the Constitution can give rise to new constitutional rights that are not expressly listed in part I of the Constitution – does not have any direct connection with the personalist principle, construed in the value-laden sense embraced by the Constitution, as mentioned above.

However, it must not be forgotten that the first proposal within the literature of the notion of Article 2 as an "open clause"[78] that was a source of new constitutional rights not specifically enumerated in the Constitution, concerned only to those rights that were deemed to be essential for the free development of the human person, considered "not as an abstract value but as an actual person, in his specific mode of being"[79].

5. Manifestations of the personalist principle within legislation

As regards the influence that the principle has had on the content of legislation during the republican era, from 1948 onwards, it has certainly required a progressive refocusing on the person as the centre of legislative attention, as compared to the fascist-era legislation that regarded the interests of the state as overriding.

The reforms to the Italian Criminal Code, dating back to 1930, which transferred to title XII, on "offences against the person", various offences originally provided for elsewhere – in particular, the fascist Criminal Code classified sexual offences as "offences against public

[77] M. Fioravanti, *Costituzione italiana. Art. 2*, cit. at 74, 41.
[78] A. Barbera, Art. 2, in G. Branca (ed.), *Commentario della Costituzione italiana* (1975), 80.
[79] A. Barbera, Art. 2, cit. at 77, 103.

morals and common decency" – are emblematic examples of this repositioning[80].

However, the most authentically personalist characteristic of republican legislation may be found where state and regional lawmakers acknowledge that the realisation of the personality and the full development of each individual are both dependent on the quality of the individual's personal and social relations, and consequently give effect to the guarantee of rights for all people – including in particular people who are particularly vulnerable – by reinforcing their most significant human relations.

A few examples are sufficient to illustrate this point.

Consider first and foremost the rule providing for mandatory maternity leave[81] which, in contrast to other legal systems, has long been characterised under Italian law by a dual purpose: protecting the health of the woman and also protecting "the relationship established during this period between mother and child, not only as regards most specifically biological needs, but also in terms of the relational and affective needs associated with the development of the child's personality"[82]. Similarly, the 1976 statute law on child adoption has been something of a trailblazer in choosing to provide greater protection to abandoned children, ensuring stability and irreversibility for the relationship with their adoptive parents through the institution of "legitimising adoption"[83].

The 1982 statute law on change of sex on the official register was likewise ahead of its time from a comparative law perspective[84]. The only explanation for this extraordinary result for the Italian legal system, which as regards other aspects of gender discrimination has often been late compared to other countries, is that it was inspired by the personalist principle. Indeed, it guarantees to transsexual persons the right to official recognition for their own gender not only with the public authorities, but also, and above all, with other persons in society.

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[80] Law no. 66/1996 and Legislative Decree no. 21/2018.
[81] Law no. 1204/1971; Legislative Decree no. 151/2001.
[82] Const. C., Judgment no. 116/2001.
[83] Law no. 431/1976; Law no. 184/1983.
[84] Law no 164/1982.

Another significant example is provided by the legislation on the award of custody of underage children in the event of separation or divorce, which has evolved over the years in a direction that is increasingly more inclined to favour the maintenance of personal relationships between parents and children, so much so that it has now stabilised around the assumption of shared custody[85].

The legislation enacted over the last thirty years concerning the circumstances of persons who are ill or who have a disability has also been heavily inspired by the personalist principle. The 1992 statute law on assistance, social integration and the rights of persons with disabilities marked a sea change in this direction in asserting that its primary and principal goal was to promote the "full integration" of persons with disabilities into all social frameworks within which their personality must be able to develop to the full, that is "into the family, at school, at work and within society", whilst also declaring, amongst other objectives, that of "resolving situations of marginalisation and social exclusion of persons with disabilities"[86].

More recently, the 2010 statute law on palliative care[87] recognises and guarantees the relational nature of the human person when the specific individual is close to death[88]. In the same line, the 2017 statute law on end-of-life choices stipulates that the guarantee of the fundamental rights of a seriously ill person must be based on the promotion and valorisation of the "relationship of care and trust between the patient and the doctor"[89] and, in situations involving "illness that is chronic and debilitating or characterised by an inevitable progression with a poor prognosis", it requires "planning of care mutually agreed between the patient and the doctor"[90]. In those situations, where palliative care is being provided, this planning will involve all persons with whom the terminally ill person has established significant human relations (the patient's family or friends, and alongside the doctor also the entire team providing care).

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[85] Articles 155 and 155-*bis* Civil Code.
[86] Article 1 Law no. 104/1992.
[87] Law no. 38/2010.
[88] See E. Lamarque, *Le cure palliative nel quadro costituzionale*, Rivista AIC (2021), 46 et seq.
[89] Article 1 Law no. 219/2017.
[90] Article 5 Law no. 219/2017.

6. The personalist principle within constitutional case law

In case law, as well as in legislation (*supra* section 5), the personalist principle has acted as a powerful engine, capable of imposing the concept of human being as a "relational being" in every sector of the legal system.

However, surprisingly enough also in case law, as in legislation, it has mostly acted 'undercurrent', in a silent way, as if it were taken for granted.

Limiting our focus to the constitutional case law, it can be said that in the first years of its activity the Constitutional Court expressly referred to the principle a few times and in a non-pregnant sense[91], in the same way of the literature of the time, which used it only to generically underline the value of the human persons, their dignity and their rights (*supra* section 4). Over the last few years, on the contrary, there are interesting developments, even if the number of citations of the principle remains very low compared to the importance that the principle really has, from a cultural point of view, in guiding many choices of the Constitutional Court.

In the first place it must be noted that the most closely reasoned judgments that evoke, as the core of the principle, the characterisation of the human person within his specific relational context are related to minors or vulnerable adults.

Of particular significance is the recent judgment in which the Constitutional Court held that the adoption of the partner's biological child – including in the event of surrogacy, which is punishable under Italian criminal law and the effects of which are cannot even be recognised in Italy – must constitute a full adoption, and must therefore create not only a relationship of filiation between the adoptive parent and the adopted child, but also family relationships with the relatives of the adoptive parent[92]. In fact, in this recent judgment the Constitutional Court, evoking the "evoking the personalist importance of family relationships", went to far as to state that human relations, in this case with family members, contribute to establishing the very identity of the child[93].

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[91] For example, Const. C., Judgements nos. 167/1999 and 198/2003.
[92] Const. C., Judgment no. 79/2022.
[93] Const. C., Judgment no. 79/2022, para 7.1.1.

Previously, again in relation to minors, in ruling unconstitutional certain provisions on the automatic suspension of parental authority following the commission of the offence of international child abduction, the Constitutional Court held that the personalist principle, "which permeates the entire Italian Constitution and which is embodied also and above all requires that the rights of the person be recognised and guaranteed not only as an individual, but also in terms of the individual's specific tangible relationships, within the context of which alone the person can develop"[94].

As far as vulnerable adults are concerned, it is important to recall the judgment in which the Constitutional Court held that, as a matter of principle, a person subject to a protective curatorship measure maintains the capacity to make donations, unless specified otherwise by a court of law. According to the Constitutional Court, this conclusion "is moreover required by the personalist principle, laid down first and foremost in Article 2", which protects the human person not only in his individual dimension, but also within the ambit of the relations through which he develops his personalism: these relations without doubt require mutual respect for rights, but may also be strengthened through acts of solidarity. Within the architecture of Article 2, compliance with the duties of solidarity is an essential prerequisite for the recognition of the inviolable rights of each person. As such, to restrict without any objective need a person's freedom to donate without restriction his time, his energies or, as was the case in this instance, his belongings amounts to an unjustified obstacle on the development of his personality and a violation of human dignity"[95].

Another significant judgment was one in which the Constitutional Court held that it was necessary to extend eligibility for house arrest also to convicted mothers of adult children with a severe disability: "the human relationships, including in particular family relations, are decisive factors for the full development and effective protection of the most vulnerable people. This results from the principle of personal value guaranteed under our Constitution, read

[94] Const. C., Judgment no. 102/2020.

[95] Const. C., Judgment no. 114/2019. See E. Lamarque, *The Cross-Border Protection of Vulnerable Adults in the EU from the Italian Perspective*, Osservatorio AIC (2022), 98 et seq.

also in the light of international law instruments, including in this area above all the United Nations Convention on the Rights of Persons with Disabilities"[96].

Within an entirely different context it is important to recall the position within constitutional case law according to which financial disputes between the state and the regions concerning the funding of essential service levels cannot be considered in the abstract, as disputes between bodies concerning solely the delineation of their powers. On the contrary, it is necessary to adopt a "transcendent viewpoint of the guarantee of essential levels of assistance that focuses constitutional protection on the human person, not only in terms of his individuality, but also within the organisation of the communities to which he belongs, which typifies the social nature of the health service"[97].

Secondly, the personalist principle has been relied on within the constitutional case law in order to prevent restrictions on persons' rights in the name of institutional requirements that do not also concern, at the same time, protection for the rights of others[98]. For example, when it struck down as unconstitutional the rule prohibiting a child born into an incestuous relationship to take action to obtain recognition of the relationship of filiation[99], the Constitutional Court recalled that "the Constitution does not justify a conception of the family that is alien to persons and their rights. This is because, it argued, "according to what has been defined as the *personalist principle* proclaimed in it, the value of 'social formations', which evidently include the family, lies in the end ascribed to them of enabling and in fact of promoting the expression of the personality of human beings"[100].

The criminal law and the criminal law enforcement also contain several extremely significant rulings regarding this issue. For example, the Constitutional Court held that "to punish in the absence of guilt with

[96] Const. C., Judgment no. 18/2020.
[97] Const. C., Judgment no. 62/2020.
[98] G. Silvestri, *I diritti fondamentali nella giurisprudenza costituzionale italiana: bilanciamenti, conflitti e integrazione delle tutele*, in *Principi costituzionali*, cit. at 4, 53 et seq.; A. Morelli, *Il principio personalista nell'era dei populismi*, in Consulta on line (2019), 362.
[99] Articles 251, para 1, and 278, para 1, Civil Code.
[100] Const. C., Judgment no. 494/2002.

the aim of 'dissuading' fellow citizens from engaging in the prohibited conduct ('negative' general prevention) or of 'neutralising the guilty person ('negative' special prevention)" entails "an instrumentalisation of the human being for contingent criminal policy objectives which is at odds with the personalist principle asserted in Article 2"[101]. It held likewise that the security measures adopted in relation to mentally ill persons who entirely lacked legal capacity "are justified, within a system inspired by the personalist principle (Article 2 of the Constitution) only if they further simultaneously both of the related and inseparable goals of curing the mentally ill and of containing him as a danger to society. A system that pursued only the goal of avoiding dangers for the society, without protection the person who is ill, could not be considered to be constitutional"[102]. Moreover, in the first of the two decisions on assisted suicide[103], the Constitutional Court assessed the reason underpinning the provision concerning this offence within the fascist Criminal Code "in the light of the changed constitutional framework, which considers the human person as a value in himself and not as a simple means for satisfying collective interests"[104].

Thirdly, the Constitutional Court has relied on the personalist principle when interpreting other constitutional provisions concerning rights as well as the express limits contained in them.

In particular, the fact that, under Italian law, individual rights pertaining solely to proprietary rights have always been subordinate or otherwise entirely secondary to rights pertaining to the relational and social sphere of the human person results from a personalist reading of the constraint of "social utility" imposed on private economic initiative by Article 41(2), as well as the guarantee of the "social function" of private property imposed by Article 42(2)[105].

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[101] Const. C., Judgment no. 322/2007.

[102] Const. C., Judgments nos. 253/2003 and 22/2022.

[103] Article 580 Penal Code.

[104] Const. C., Order no. 207/2018, followed by Judgment no. 242/2019.

[105] Article 41 It. Const.: «[1] Private-sector economic initiative is freely exercised. [2] It may not be conducted in conflict with social usefulness or in a way that may harm health, the environment, safety, liberty and human dignity. [3] The law shall provide for appropriate programmes and controls so that public and private economic activity may be oriented and co-ordinated for social and environmental purposes». Various rulings of the Constitutional Court have nonetheless established, in different

7. A few concluding remarks

In conclusion, I can perhaps say that, from 1948 until today, the personalist principle has silently imposed itself in the entire Italian legal system: it has worked well, it has worked hard, but it has permeated the legal system without appearing, acting underground and without much fanfare.

This tireless work done behind the scenes by our principle has achieved, in my opinion, at least two great results.

Firstly, it inspired the introduction into the text of the Constitution itself, with the 2001 constitutional reform[106], of the principle of horizontal subsidiarity, which is evidently the reflection on the level of the organization of the public powers of the "profound social nature" of the human person[107].

Secondly, and above all, the personalist principle has had an effect on the content and nature of human rights guaranteed by the Italian legal system, which can be described in this way.

On the negative side, the principle imposed the rejection of the very idea of human freedom as pure self-determination and prevented the rights guaranteed at the constitutional level from assuming an individualistic connotation. On the positive side, it required that the full development of every single concrete human being be guaranteed also through the safeguarding of their most significant relationships, and not solely and exclusively through the guarantee of their self-determination capacity.

Summarizing, in the Italian legal system, thanks to the personalist principle, the self-determination that denies or ignores interpersonal relationships, or that puts them at risk, finds no constitutional guarantee.

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contexts, that it is impossible to give equal weight to considerations relating to the development of the human person and considerations relating to assets, invariably subordinating the latter to the former. See, for example, Const. C., Judgments nos. 479/1987; 419/2000; 219/2008; 204/2016; 83/2017; 58/2018.

[106] Article 118, para 4, It. Const.: "The State, regions, metropolitan cities, provinces and municipalities shall promote the autonomous initiatives of citizens, both as individuals and as members of associations, relating to activities of general interest, on the basis of the principle of subsidiarity".

[107] Const. C., Judgment no. 131/2020.

I can give two examples, taken from constitutional case law, of this silent, not explicit, but very effective action of our principle.

Think, for example, of the judgment that ruled unfounded various questions concerning the constitutionality of legislation on recruitment to and aiding and abetting prostitution[108]. Here in fact the Constitutional Court recalled that the Italian Constitution recognises and guarantees rights "in relation to the protection for and development of the value of the person", and that "this value is attached not to the individual in isolation, but to a person vested with rights and duties, and as such embedded within social relations". The conclusion is very revealing: "the offer of sexual services for consideration does not by any means constitute an instrument for the protection and development of the human person but rather – much more simply – a particular form of economic activity", which as such is subject to far-reaching constitutional constraints.

The prohibition, enforced by criminal sanction, of the practice of surrogacy[109] is, in my opinion, even more significant.

The link of this prohibition with the personalist principle emerges, almost imperceptibly, in a hint contained in some recent judgments of the Constitutional Court and of the Court of Cassation which deal with related issues, such as the *status* of the child born abroad through surrogacy and the 'living law' which excludes recognition in Italy of a foreign court decision declaring the relationship between the child and the 'intended' parent on the grounds that the prohibition of surrogacy is a principle of *ordre public*. According to this case law, indeed, surrogacy not only "causes intolerable offence to the dignity of the woman", but also "profoundly undermines human relations"[110].

[108] Const. C., Judgment no. 141/2019.

[109] Article 12(6) of Law No. 40/2004.

[110] Const. C., Judgments nos. 272/2017 (para 4.2.); 33/2021 (para 5.1.); 79/2022 (para 5.2.3.). The same words are repeated verbatim by Court of Cassation, Joint Sections, Judgment no. 38162/2022.