

What Can the Churches Contribute to the Future of Europe?

The Normative Basis of a European Constitution –
a Guarantee of the Fulfilment of Basic Needs and Basic Rights, or:
Eros in the European Constitution?¹

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Ladies and Gentlemen:

Firstly many thanks for the honour of being invited to speak here at the Annual Conference. It is not often that one can meet men and women from so many European countries who are all engaged in the same great task. In respect to your contribution about the contribution of Churches to the future of Europe I will try to explain my thoughts about the normative basis of a – still unrealized – European constitution. I have already had the pleasure of holding a workshop in the same context at the European Women's synod in Gmunden in July of this year, to consider, discuss and formulate these fundamental principles. Those of you who were there will recognize a few of the ideas. I also had the opportunity to learn to value the help and support of your institutions in work on the future of Europe. I was able to enjoy the hospitality of the Swiss academies on several occasions as a member of a team calling itself *Europa von unten* (*Europe from beneath*) which belongs to the *Eurotopia* movement, in Boldern near Männedorf with Reinhild Traitler, in the Paulus-Akademie in Zürich with Max and Brigit Keller and in Louverain in the upper part of Neuchâtel with Marco Pedrolì, whose personal recommendation I have to thank for my invitation here.

In the first part I will explain the normative meaning of a *constitution*, afterwards I will go on to explain the question why it is necessary for creating a binding guarantee of basic rights, recognising and acknowledging the common *basic needs* of all people. To conclude I will

¹ This presentation was held at the Annual Conference of the Ecumenical Association and Laity Centres in Europe, September 5 - 9, 1996 in Scotland. Translation: Rachel Calder, Birmingham, England.

try, as an outsider, to formulate suggestions for Churches and the Church institutions - suggestions which could contribute to democratically opening up and strengthening the way that we live together in Europe, as a step towards living together better in the world, under the presuppositions created by today's crisis of structure which accompanies the globalization that is transcending all boundaries and considerations.

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Europe is still a project. There are certainly a whole list of European institutions which exist and function. There are advising and law giving facilities of the European Union, the European Commission, the European Parliament, the European Court of Justice and there are an abundance of European enactments and laws which are already innumerable. There is however no constitution that is for the people of Europe themselves and which would guarantee the fulfilment of basic needs, rights and duties.

What would a constitution accomplish? What would it need in order to be authenticated? Why is it necessary to have a guarantee of the fulfilment of basic needs and basic rights?

Before I deal with the individual questions I want to tell a story. It is not a new story. It was first told about 2200 years ago in a men's drinking bout called "Symposion", by Socrates who is known to have been killed in the year 399, in our time system, by a cup of poison. He did not invent the story himself but he heard it from Diotima a prophetess from Mantinea. At this drinking bout the men deliberated about the nature of Eros. Socrates corrected the mistaken opinions on the subject and maintained that on the occasion of the birthday of Aphrodite, Penia (need, poverty) had mingled with those who were celebrating and when Poros (the path finder, the orienteer) became tired from drinking and withdrew into the garden, she lay down by him and received Eros. So Eros was not a god but a "daimon", a striving, mediating force between the human and the superhuman, which itself is "always poor, and not as most believe, fine and beautiful, but rough, unattractive, unshod, without habitation, always lying around on the floor, uncovered. It sleeps in doorways and on the streets in the out-

doors. It is always a comrade of neediness in accordance with its mother's nature. In accordance with its father's nature it follows good and beautiful things and wants to become wise."²

What has this myth got to do with our subject? It illustrates, by personification that human need (*penia*), that is the great human needs which are part of existence itself, combined with capability, are aimed at finding ways (*poros*) (of fulfilling them) of leading away from the (individual) person to adopting a somewhat greater form which is valid for the plurality of people. It can be said that this greater form is actually itself a constitution which makes the wants and needs of individual people a subject for consideration and guarantees their fulfilment as a basic right, not in a statistical definition but in the sense of a striving (or looking for a way) for fulfilment, not only for the individual but for all. So – Eros – son of need and way finding – symbolized in the constitution?

Firstly, what characterizes a constitution is discernable here. It is a binding form of a basic legal framework for the plurality of people in a specific context, whether this is a nation State or a union of States, e.g. Europe, where it is not the States, that is the Government, which forms the basis for legitimising the constitution but the citizens of the individual states who have joined themselves together. It is the citizens for whom the protection of the individual within society is significant, who establish the basic organization and common goals for *living together for a great number and variety of people* within this framework, so that the needs and rights of one are compatible with the needs and rights of another. The constitution maintains the things which ought not to be negotiable in the dynamic of the political process, in the constant production of regulations, decrees and laws which are aimed at solving political, social, cultural, economic, transport and other problems pre-emptively, in law dodging and the day to day misuse of laws: the dignity of the individual. In other words, in that the constitution guarantees the fulfilment of basic needs and basic rights, it guarantees the precedence of the individual above laws, the precedence of humans and their needs and rights. Again the credibility of the consti-

² Symposion, 203 c/d, translated from a translation by Friedrich Schleiermacher.

tution lies in actually accomplishing the fulfilment of basic needs and basic rights which it guarantees. This may be in appeal to the constitutional court, which every person must be empowered to address so that in the case of injustice – possibly of legally legitimate injustice – the court intervenes in his favour.

The relationships of basic needs and basic rights mirrors a basic condition of existence which has a normative character, that comprises an instructive guideline. The french philosopher Simone Weil, who died in 1943 in exile in England represented this main condition with the island example³. If there were a person who lived entirely alone in the universe, this person would have no rights but he would have needs and obligations. To some extent he would be obliged with regard to himself and his own primary needs. He would not be in the position to be able to fulfil these but nevertheless he would be obliged to make efforts out of respect for his person. "*La notion d'obligation prime la notion de droit*" ("*Duty comes before rights*") is Simone Weils laconic conclusion which is also valid in regard to the fact that society is composed of variety. Because of the diversity of people basic duty must be reciprocal. In other words: rights, in the first place basic rights, derive from the fact that the mutual independence of people from each other means the mutual recognition of the same humanity in every individual person and with it the same needs for the fulfilment of basic rights. It would be ridiculous to speak of basic rights without this mutual recognition. On the basis of the universality of this rule people who are not in the position of being able to fulfil their duties because of physical, mental or material injury, have a valid claim to the fulfilment of their basic needs and rights. In their individuality they are part of the whole plurality. Not least because of them, that is the weakest, the guarantee provided by a constitution is necessary so that no one is literally excluded from equal recognition and also so that those who have no voice in the public domain are included in the recognition of equal humanity.

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³ In: Simone Weil. *Enracinement. Prélude à une déclaration des devoirs envers l'être humain*. Gallimard 1949.

Where do individual basic needs and basic rights exist, how do they complement each other and how do they compete with each other?

First of all it should be said that all areas of existence are fixed by the same *basic* needs for everyone, that, irrespective of origin, time and culture, as much in regard to the physical, mental (i.e. as much intellect that is the spirit which is hungry for knowledge, perceptive, which analyses and reflects as creative, artistic ability, feelings and spirituality) as in regard to living together i.e. the community and political concerns. Because the island example only serves as a theoretical basis and because the individual is always born within a context of plurality, I will thematize the basic needs and basic rights in the opposite order. For it is the political and social conditions which guarantee the fulfilment of the primary physical and spiritual needs – or make it more difficult, or even prevent them from being fulfilled (to differentiate them from individual secondary needs and wishes).

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What characterizes the political domain?

Several times already I have talked about people living together in society. The political domain is already characterized in this. Politics is making efforts and striving for structuring the way people live together in society, it is a game of strength of power, often of trading power, yes a power struggle for structuring the public framework. According to Hannah Arendt the public framework and with it the political domain, is the *domain of action* par excellence, namely the *domain of freedom*. In other words, only when the public framework is peaceful can one speak of politics. It follows from this that politics and *violence* are irreconcilable, the appearance of violence always mean the simultaneous refusal of politics, it means the introduction of violent methods i.e. of methods which have nothing to do with the aim itself to reach that particular aim (of fists and truncheons to weapons, the involvement of police and the military to controlling convictions and general terror.) With the exception of situations in which regimes of violence must be fought against and ended with retaliatory violence because change is impossible with political means, violence brings, by definition, not freedom but the suppression of freedom.

However politics in the sense of freedom requires *power*. Power is to be understood as the discursive, democratic way, i.e. the way through language - speaking, debating, media coverage of arguments etc. the agreement of many being obtained for the purpose of succeeding in a common goal. Political decisions which are reached in this way can be changed and corrected by new agreements and formations of power because the fact that a decision is reached by a majority in no way guarantees that that political decision is just. John Stuart Mill's warning⁴ should be heeded. He said that even if the whole of humanity minus one single person were of one opinion and only this person held the opposing opinion, the truth could still lie with this one person and therefore it should by no means be suppressed. From this it follows that the individual person must have the possibility of being able to change the opinion of many using political methods and of leading them. J. St. Mill warns of a possible "Tyranny of the majority", if the political rights of the individual or of any minorities were suppressed. The unconditional respect of this principle could effectively control the practise of power. Because control and limitation are necessary, on one hand in a temporal respect in that it must be defined as a time limited mandate and on the other hand in a formal and material respect in that it is obliged to be accountable with regard to the public which has given it the mandate. Power is the - difficult to administrate - consequence of freedom that is its inherent assignment.

It is not power that is dangerous but the misuse of power. In order to prevent this there needs to be the guarantee of free expression of opinion on the one hand for every individual and the freedom of the media which results, on the other hand transparent institutions and a consistent "séparation des pouvoirs" (usually and misleadingly called "Gewaltentrennung" in German), a division of legislation, executive and judicial responsibility which was already postulated by Charles Secondat de Montesquieu in his great work "De l'esprit des lois" in 1748 - an indisputable institution today too, to the most optimal reduction of abuse of power, although this can nevertheless be ruled out because

⁴ John Stuart Mill: On liberty. London 1859. German: Über Freiheit. Athenäum Verlag, Frankfurt a. M. 1987.

of the general tendency which people have to abuse. The most serious abuse of power which is possible today lies in the lack of division of political and economic interests, in the exploitation of policy for particular purposes, not the "*bien commun*" of the economic interests which serve pluralism for example but the double mandate of politicians in the management or boards of large enterprises as well as in the Parliament and Government.

This covers the most important features of this form of politics which we call *democracy*. To summarize again: it is a sphere of freedom because its formation results from discussion, argumentation and debate, the free and public exchange of opinions, by including many, i.e. the participation of many. It exists thanks to their agreement, by which it is also possible to change the decrees which result so that "*bien commun*" is achieved, through which political business can be conducted effectively, it continues however to be alterable by division, openness and controlling power.

Being able to participate in structuring the public framework and so having a voice in the development of the way people live together within society *is a basic need*. This may be in the form of freedom of expression of opinion, freedom of publication or freedom of assembly, active and passive suffrage and franchise. This basic need has been ignored by a large proportion of people down the centuries. Because of this neglect or rather only partial recognition, politics became a class privilege of a small number of free, propertied men - from the Polis of Greek antiquity until modern times with gradual corrections being made as a consequence of the revolutions of 1774, 1789, 1848 and 1918 until the changes of 1989. Indeed in later modern times discrimination was abolished as the excluded, unpropertied men took part in politics, slavery was also abolished. The injustice of excluding women from politics remained uncorrected for a long time however. The massive shake which the two World Wars gave was necessary for most European and non-European countries to give women the right to vote. In Switzerland this only happened on a national level for the first time in 1971.

The basic need for a political voice in the structuring of the way people live together in society and the basic right that derives from this, which is part of the basic need for *freedom*, coincides with the need for *equality*, in so far as this means recognition of equal humanity. This involves a simultaneous recognition of *differences* and the *right to be different*, in a personal respect just as in regard to the cultural and political. The equality which was postulated and announced in the French Revolution then only affected men of the middle class who demanded equality with men of the aristocracy and clergy. It did not have anything to do with equality amongst human beings. The enormous inequality in respect to political rights which foreigners in European countries have proves that this equality is poorly delivered today at the end of the twentieth century. This has consequences for the education of their children, the maintenance of their health and procurement of employment and for freedom of movement and settling. In particular however it has consequences for participation in political structuring of freedom and equality outside of the civil rights of nation states. The recognition of this primary need is then linked to a particular passport. This deprivation and the inequality which results from it reaches a climax in the case of asylum seekers and refugees. Respect for equal humanity and care for the individual hardly exists for them, and absolutely no consideration is taken of their need for autonomy. This massive inequality is a great political scandal in all European democracies. Correction of this abuse is an urgent requirement for a European constitution.

Political rights should not be privileges. Privilege and the unequal distribution of rights must be excluded from the political arena. Unfortunately it seems an unavoidable fact that society is characterized by unequal distribution and injustice, with regard to the material just as with regard to the immaterial. However this need for *justice* is one of the indisputable and moreover most important basic needs. In the course of recent developments in society it has been maintained that the basic right for justice contradicts the basic right for freedom. It is doubtless one of the primary requirements of democracy and one of the most urgent issues of our time to minimize growing social injustice without endangering political freedom. To introduce justice in educa-

tion, in employment, in the system for duties and taxes, in social insurance and so on and so forth corresponds with the need for equality. Justice and equality are closely related in so far as not respecting equality, not recognising equal humanity, causes the most serious injustice because it is based on a racist or hierarchically grounded image of humanity. Our generation has experienced where this can lead in the most extreme case and continues to experience it in new ways.

One of the most important requirements as far as politics is concerned is, I repeat, that all decisions remain correctable. To this end the right of opposition, the right of contradiction of political abuse of power must remain an unconditional, indisputable, basic right. Without a guarantee of this basic right there is no democracy and political relationships which are apparently democratic but do not permit this as a basic right in practise, become farcical and are perverted to a regime of force.

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People as individuals are always at the same time relating to other people, i.e. he or she is in different relationships within which his or her basic needs and basic rights are defined. I will go on from speaking about relationships in a political context to relationships in a private and social context.

The social arena or society is the arena of life supporting activity, of working and living together. It is closely and widely related to culture. Politics also has a part in culture in so far as it is free from violence. Violence and culture are in implacable opposition.

In antiquity the social realm was always clearly separated from the political realm. Social had to do with the "household", the "oikos", the free, political activity of capable men had nothing to do with it. The "oikos" was the realm of no freedom, the realm of women and slaves without rights, the realm of children and servants. In short those who had to perform and had no voice, no right to discussion. Today what corresponds to the traditional "oikos" is the sphere which belongs to all sorts of people who have no political rights but still very much have

an obligation of performance - working emigrants, asylum seekers and refugees, foreigners in general.

"*Oikos*" has always been based on the division of labour, that is no achievement of modern times. Still, since the eighteenth century, since the triumphal march of industrialization, division of labour has been fragmented into the smallest specializations so that a person's work, the person himself, has become a production factor like a machine, i.e. a variable in a calculation to maximize gain, a variable which, according to the result of the reckoning, is valued more or less or even exchanged if it is declared to be too costly and so surplus to requirement. The extent of alienation and exploitation of people, of heteronomy yes of objectification, seems to me to be the most weighty consequence of modern times from an ethical point of view. Its dark flip side which, quite apart from the painful individual stories of people in all countries, led to the mass unemployment of the thirties, then to the mass abuse and the declaration of the worthlessness of human life by the racist and in particular anti-semitic ideologies of this century and finally led to the mass killing of millions of people. The general declaration of human rights by the United Nations which followed on the 10th December 1948 was supposed to outlaw a repeat of such crime and so prevent it. Still not one case of human humiliation practised by a state or another powerful force has been stopped by an appeal to this "General Declaration". In hundreds of wars and regimes of terror in all continents, millions of people have been tortured, tormented and killed since 1947, children, women and men. And millions more are starving, thirsty or have died of curable illnesses because there has been a lack of medical care as a result of an unjust distribution of vital provisions.

Today too a campaign is being led against people in all continents, it is not only a military campaign but it also involves economic resources, it is against the claim for the fulfilment of basic needs. The consequence is the exclusion, the material and cultural and psychological impoverishment of - again - millions. Officialdom produces myths and half truths on mass to cover up the war of the market against humanity or to justify it. "Flexible employment" is spoken of, growing profit for shareholders, falling unemployment. The opposite is actually the case. The statistics are arbitrarily constructed because for example all those

who are not eligible for any unemployment benefit, are not included. In the middle of August the Bank of England questioned the Government's declaration about unemployment. At the same time UNO drew attention to the fact that the gulf between rich and poor in Great Britain has become as great as in the African countries. The OECD (Organization for development and co-operation) warns the USA and Great Britain of the "corrosive effects the growing inequality has on social structure" - all this at the beginning of August this year. This warning must be directed to all countries who have prescribed to a single track and inconsiderate neoliberalism, which want to lead their political economy to success with radical reduction of personnel, the social welfare system, and of the education system. The growing number of unemployed people, frustrated and deeply humiliated people, with whom we are confronted today, despite the growing profits of the big world-wide producing or trading firms, is the Mene Tekel on the wall. Looking back on the great depression of the thirties it must be remembered where declaring people to be worthless leads. Hannah Arendt wrote in the sixties that this was a characteristic of a totalitarian power. The new development is that a totalitarian regime is no longer exclusively bound up with national regimes but can exist on a transnational level via market and economic structures. The socio-economic structural crisis which started with the oil and financial crises of 1973 and which is in full swing since the beginning of the nineties after a temporary lull, is no natural phenomenon but a result of political and economic leadership decisions, probably wrong decisions, which are judged by eminent researchers (for example the Oxford Professor Lord Ralph Dahrendorf or the Zürich Professor for Empirical Research, Heidi Schelbert).

It seems to me that these decisions need to be corrected urgently - in favour of the people of whom many fall victim to these decisions and the crises they produce. In addition to the impoverishment of the less well educated and poorer members of society, the middleclass is increasingly in trouble too. This again leads to hardening on the political level, especially as far as laws for foreigners and regarding asylum go. *Without meeting basic physical and cultural needs, the need for healthy and sufficient nourishment, for hygienic accomodation, for sufficient medical care*

in the event of illness, for understanding and learning, for education, further education and development, for an active role in the formation of society in which each lives sharing his life with the one that he loves, with autonomous employment which is humane, with respect and recognition, with beauty and recreation (as Simone Weil insisted again and again), without the fulfilment of these basic needs human society falls to pieces. Since the Government has less and less means at its disposal, on one hand because of a bad distribution policy during the time of high boom, on the other hand because of today's crisis one consequence of the neoliberal doctrine of self-responsibility, and the practise of demolition of the social state which results from it would be that first the Central Banks are made responsible for the impoverishment of large groups of people, i.e. take on the social costs which result, that secondly the firm bosses are personally liable for the redundancy of employees as a result of profitmaking down-sizings, in the most extreme case with consequences in criminal law, that thirdly the enormous gains of share holders have social obligations, i.e. that the profit from shares which results from dismissals, mergers and similar business practice are invested in education, further education and job creation schemes and just wages.

It is an urgent necessity that the wide reaching and catastrophic consequences of the exclusion and impoverishment of a large part of the people are noticed by the political, economic and cultural and also Church decision makers. *People who live with social injustice which is both wide reaching and long lasting forfeit freedom. Political rights and cultural participation can no longer be taken seriously under circumstances which are awkward for survival.* When such circumstances get out of control, as is the case today, the collective call for an authoritarian leadership and with it the development of a totalitarian regime, as Hannah Arendt pointed out, is not far away. A European constitution that will work must therefore guarantee basic social needs and rights, i.e. the needs, which are basic to existing and living together in society for all people, and the Basic rights which arise from these. A constitution which would be supported by *everyone* and which everyone would be allowed to benefit from could only be like this so that neither exclusion nor conformity would be feared – a forward-looking constitution.

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So I come to the third area of basic needs, to those which characterize the individual person in his personal uniqueness, in his individuality, in his differences. I think that in the first place it has to do with the need for respect of personal individuality and uniqueness, for respect of differences, in making judgements and decisions too. A person's respect includes autonomy over one's own body, which has consequences for ethically relevant questions with regard to abortion, sterilization or castration and other medical – also genetic- operations, in which priority must be given to the responsibility of the person concerned in making the decision.

Capabilities, talents and skills also belong to personal uniqueness, just as does the need for their development and realization. It seems to me that the mutual recognition and support of these needs could have enormous positive results on the community level. When people do what they like doing, they mostly do it well and so there is a general advantage – always when this is within the bounds of a reciprocal respect of the basic needs of other people. Personal, individual basic needs are also expressed in *relationships*: in the relationship of the individual person to himself, i.e. in caring for oneself, in loving or even neglecting oneself, in self contempt, even hate. One's relationship to oneself is mirrored in relationships to those who are part of one's private life – parents, children, life partner, in friendships, relationships with colleagues and also the way conflicts or even enmities are dealt with.

Another, exclusively personal level where relationships exist is the level of a relationship to the divine (the transcendental), needs for a non-human, for a religious answer to the question of meaning, the need for spirituality or meaning from something which surpasses the "condition humaine", the mortality and nullity of human existence, something that gives a sort of unquestionable safety amongst the irreconcilable existential fragility. I assume that faith means the fulfilment of this need and that therefore the guarantee of freedom of expressing faith and practising religion belongs to the European constitution as well, a guarantee which would mean that if these needs are not being fulfilled in a certain country this is sufficient reason for having asylum in a third country. In any case the need for religiousness and free prac-

Use of religion must not – ever – be confused with religious force. This would deeply contradict the need for respecting the individual, differences and in the end freedom.

Next to the need for transcendence there is a further basic need of human beings, for instance the need for privacy, for self chosen and self responsible forms of *sexual practise* (on the understanding that there is equal reciprocal agreement), of *emotion*, of *aesthetics* and *intellect*. In short the realization of all sorts of created talents and capabilities. These needs together form what could be called the *cultural private basic needs* of the human being.

How urgent is their fulfilment? How can they be guaranteed politically? In other words: how do these personal, private basic needs become basic rights?

There are enough investigations which prove that even children become life threateningly ill when they lack what they need as far as care, love, communication and stimulation go, basically when their personal, cultural needs are not met. These needs are expressed in the basic right with respect to the person, in the basic right of worth, then in the right for education and further education. The right to sleep and relaxing or a right to beauty are not found in any declaration of basic rights or in any constitution but the most basic needs lie behind them and there are fatal consequences if they are not fulfilled. How can the enormous growth in violence in metropolitan areas, be otherwise explained, where life is influenced by constant stress and the lack of beauty, in the large refugee centres or slums for example, and in the ugly deprived outskirts and immigrant areas of large towns. Culture is not an additional extra, it is not the butter on the bread but the bread itself. Culture justifies nothing and saves noone as Sartre once said, but it is the mirror in which we see ourselves. "We" means "all of us", society in its entirety and interdependence, not only in the circles and areas where it is pleasant to look around but also in prisons, slums, the dirty, noisy city streets, in the outlying districts of immigrants, in football stadiums in which two thirds of the young people who fill them have no training placement, no regular job, no future, with the drug addicts and alcoholics, with the human trade in the red light districts of our towns and

so on. Looking in this mirror shows the face of our culture. The fulfilment of personal *basic* needs must therefore be guaranteed by constitution.

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So I come to the end. I started by saying that I would formulate suggestions as to how the Churches could make a contribution to the great project of a European constitution. Allow me to try and do this.

Thanks to the fact that the Churches can simultaneously be supported by strong national structures and transnational links, and that they - still - have a meaningful normative function for millions of people, they have enormous chances to contribute *effectively* to a better way for society to live together in the future. I think that the Churches must make themselves advocates of an unconditional fulfilment of the basic rights of every individual person, of all people, independent of which religion they belong to or whether they are religious at all, solely because of the value of humanity. This would mean that they develop an effective scepticism towards the individual or state which abuses power. It would mean that they resign their particularist, dogmatic or power defined claims to identity, claim to a unique truth in favour of defending just and human conditions for all people. In practical terms this would mean that they would fight for a right for asylum and for foreigners which would raise awareness of the scandal of the inequality of justice with regard to the fulfilment of basic rights. That they would fight for the children of immigrants to be taught in their mother tongue and in their traditional religion, Islam or Buddhism or whatever, knowing that it is up to the individual alone to define their culture and religious identity for themselves and their children, to change or reaffirm it. In practical terms this would mean that people who come out of their religion or Church with serious reasons do not fall out of the social net. It would mean that Churches set an example and realize within their own structures and area of influence what they want to see throughout Europe, on a global level, throughout all continents and societies, in all human relationships, the political and social, the religious and cultural, in agreement with the need for fulfilment of the basic needs which could be lived, planned and defended by every one

of you here in the hall as negotiable and legally recoverable, political, social and personal basic rights.

So, is Eros to be a binding goal in the European constitution after all?