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HAPPINESS: A MATTER OF LAW

The pursuit of happiness in the modern legal thinking according to Jefferson, Filangieri and the Constitution of the Italian Republic.

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Nowadays, everybody talks about happiness.

In a time period during which the most serious economic, social and cultural crisis of history has taken place, it is more and more necessary to focus on the right to the pursuit of happiness, which can be considered as the primary need of any human being.

In this article, a political aspect of the idea of happiness will be illustrated, directing our attention to the possibility that the pursuit of happiness can be a positive right guaranteed by any legal system. In short, the following question arises: does the citizen have the right to be happy?

Since ancient times, the idea of happiness has always been present in political considerations, as if it were a thread connecting different theories of philosophy of law that suggest that a happier society can be built by using the law.

In the 17th and 18th centuries, the modern natural law tradition had already accepted the challenge of introducing the concept of happiness, which had a personal dimension until then, in the field of positive right.

One of the greatest representatives of the Italian natural law doctrine was the Salernitan **Antonio Genovesi**, who wrote in his *Diceosina o sia della filosofia del giusto e dell'onesto* (1767) that “**a right is always an opportunity for us to be happy**”, thus leading to a real policy of happiness, which culminated in the American War of Independence with the famous *Declaration of Independence* approved in Philadelphia on 4th July 1776.

In that occasion, the Founding Fathers of the United States of America, led by Thomas Jefferson, declared in the preamble, one of the most well-known texts of the world: “*We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with **certain inalienable rights, that among these are life, liberty and the pursuit of happiness***”.

Thanks to this *Declaration*, whose memory is celebrated every year on Independence

Day, the pursuit of happiness has become a constitutional matter and an inalienable right behind which the political power has to shelter in the government action.

However, the American experience was not an isolated case, but a continuation of another experience worth remembering, i.e. the Neapolitan School one, whose best representative was **Gaetano Filangieri**. His monumental *Scienza della Legislazione*, which is made of seven volumes written between 1780 and 1788, had a strong impact on the Italian and European legal culture of the late 18th century, thus influencing the Founding Fathers' thinking.

Indeed, Filangieri was in touch with the most important characters of the American revolution, especially with Benjamin Franklin, who signed the *Declaration* along with Jefferson and saw in the volumes of the *Scienza* the legal foundations on which the new country that was about to control the whole world was built.

It is highly probable that **the right to the pursuit of happiness** carved in Philadelphia and still representing the so-called “American Dream” had an Italian father.

Filangieri's thinking about the philosophy of happiness was even further ahead than the American experience.

While in the *Declaration* the pursuit of happiness is recognised as a right, thus taking a subjective interpretation into account, in Filangieri's thinking it is strictly connected to the political action and the law, whose aim is to guide towards “**national happiness**”.

As explained by the Neapolitan jurist, the government can ensure national happiness by guaranteeing all citizens the right to engage in work to fill up the time span between their satisfied and personal need and a rising one, in other words, a community's real happiness is to be found in the principle on which the Italian Republic is based nowadays, i.e. **work**:

“When every citizen in a state can comfortably cover their needs and those of their family with a decent job of 7-8 hours, this state will be the happiest on Earth. [...] An employment, a moderate job that is sufficient to meet one's needs and fill up the time

span between a satisfied need and a need to be satisfied is the only thing that can make a man happy”.

Contrary to what you may think, the right to the pursuit of happiness is strictly connected to the principle on which the first article of the Constitution of the Italian Republic is based, i.e. *Italy is a republic founded on work*.

Without considering the fact that this sentence cannot be applied to Italy’s current situation, since the youth unemployment rate has been high in the last years, it is worth pointing out that the lesson about happiness was not useless: on the contrary, the republican constituents imprinted it on the foundations of the Italian legal system.

In conclusion, a disposition that is forgotten too often and is hardly ever taken into consideration is the one of art.36 of the Italian Constitution, which states that “*workers have the right to wages in proportion to the quantity and quality of their work and in all cases sufficient to ensure them and their families a free and dignified existence*”.

Our existence needs to *be free and dignified in all cases*, therefore the constituents want our life to be happy.

Since happiness is still present in our political and legislative system, our legislators will need to ensure that political, legislative and governmental actions aim to make happiness a real matter of law, thus following Jefferson, Filangieri and the Founding Fathers’ thinking.

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