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DELLA
REAL CASA DI SAVOIA

A warning about the continual efforts to promote disinformation concerning the norms of dynastic succession

(prompted by studies and bulletins which have appeared in some publications of a monarchic persuasion)

A disinformation campaign is under way in the guise of *pro veritate* opinions and sober reflection which is certainly not the case, neither in form nor content. Once again improper use is being made of referable facts and principles on the subject.

In anticipating a number of points in the following text, it should be made quite clear that:

1. the dynastic succession is not simply governed by norms of State, but by norms of the House, then, eventually, by those of the State in so far as the connection between House and State is acting;
2. the French revolution they never dreamed of interfering with the norms of dynastic succession;
3. the institution of prior consent to marriage was not done away with under the Napoleonic Code, which in fact introduced it into the Civil Code;
4. the reference in the Albertine Statute (art. 2) to the 'Salic law' was not intended to abrogate the entire system of the dynastic laws of the House, nor would the Statute have been able to do so;
5. the Statute was not empowered to abrogate all previous laws, but only laws that ran counter to it;
6. Amedeo III's Royal Patents, defined by him as the laws of the Dynasty, did not run counter to the Statute and therefore were not abrogated by it;
7. quite the reverse; under the powers of the Statute these dispositions were also confirmed on the civil level by art. 69 of the Civil Code of 1865;
8. the same may be said for the code of 1942, where the norm on royal consent is worded in a way that is almost identical to the formulation of the old code. That it was not introduced for the requirements of the Fascist regime is self evident;
9. **the dynastic norm on the king's prior consent to the marriage of the princes of the House, whereby it inflicts an automatic sanction, requires no further procedure since that would not only be incomprehensible but contradictory as well;**
10. this institution, like that of the Sovereign and later on the President of the Republic towards some of the State dependents, is not intended to violate the 'the fundamental rights of man', in that it does nothing to prevent marriage, but retrospectively, only the status of belonging to the Royal Family and the continuance of whatever public function was held;
11. the transitory constitutional norm on exile cannot in any case assume the role of a dynastic norm of succession to the Crown, which lies beyond the competences and purposes of the Republic;

12. on the basis of the dynastic laws of the Royal House of Savoy, Umberto II maintained the prerogative to consent (or not consent) to the marriage of members of the Family through decisions which brooked no appeal;
13. the form and content of the King's letters confirm the force of this norm, along with his inflexible decision not to grant prior consent to the marriage of his son with Miss Ricolfi;
14. it was not King Umberto II who excluded his son from the Dynasty, but his son who excluded himself from the moment he violated (a very far cry from 'opening the way to progress') the prerogative of the Head of the House (observed by all reigning Houses to this day);
15. in order to reverse the consequences of the failure to obtain prior consent to his marriage and to restore Vittorio Emanuele to the dynastic position from which he was destituted, all the king could have done was call upon the other male members of the House of Savoy and, without being able to oblige their consent, simply ask them to renounce the new dynastic positions they had automatically acquired. None of this happened.

Let us now follow this concise list of the major points of interest by taking a closer look at some of them:

To start with it may be as well to clear up a mistake frequently made by some commentators. In a 'constitutional monarchy' it is not the State that dictates the rules of the dynastic succession of the House. But it does reserve the power to establish the connection between the Dynasty and the supreme authority of the State, although it may set limits and conditions: this is exactly what happens with art. 2 of the Albertine Statute. Usually, in the course of time, any new regulations that have been added concur with the others to form those of the House.

With these premises, we may go on to observe that the institution of consent to the marriage of a member of the Royal Family is by no means a relic of the past, nor was it overridden by the Napoleonic Code which rules on consent to marriage as a general rule of the family. In particular art. 148 of that Code established the obligation of the parent's prior consent to the marriage of the son, even if he had reached his majority, as well as to the marriage of an under-age daughter. This gave rise to what has been termed the 'family power' of the head of the family (MACADÉ, *Spiegazione, teorico pratica del Codice Napoleonico*, Italian ed., Naples-Paris, 1872, Vol. II, p. 226, LAURENT, *Principi di diritto civile*, first Italian translation, Trono, Naples, 1879, Vol. II, p. 330).

It is too often overlooked that the Civil Code of 1865 had two ideal reference points, i.e. the Statute of the Kingdom, granted by Carlo Alberto in 1848, and the French Civil Code, from which the civil institution of prior consent to marriage was adopted with a few variants (DE RUGGERO, *Istituzioni di diritto civile*, Messina 1930, Vol. II, p. 578). This is clearly attested in existing manuals and commentaries and the Italian Civil Code of the day; while the references made by some to the French Revolution and the laws of eugenics may easily be dismissed as wandering.

The inferior status of single norms of the Civil Code in respect to the Statute whose pre-eminence does not mean that there is any sort of contrast, per se, and in fact their continuance confirms their conformity with the fundamentals of the Constitution. The fact that the principle of prior consent to marriage was then considered by the legislator of the Civil Code in conformity to the Statute – a judgement also common to all jurisprudence – confirms without the shadow of a doubt that this principle (both expressed as a dynastic norm and a code norm) was not ascribable among those which were held to be abrogated on the basis of art. 81 of the same. In fact, in order to sweep away all the preceding laws, the Statute would need to adopt the formula «all norms that have not been reproduced in the Statute...». To reword art. 81 «any law in contrast to the present Statute» with the words «any other previous norm» amounts to either a gross mistake or an abuse.

At this point nothing could be clearer than that Amedeo III's Royal Patents of 1780 were never abrogated, nor was there cause to do so, since they contained no principle that ran counter to the Statute; nor were they abrogated by any specific legal disposition proclaimed by the king, or modified by the ones reproduced in the codes, where they concur without being annulled.

In this connection it is as well to make it perfectly clear that these are obviously the norms King Umberto II referred to in his cautionary letters to his son, when he wrote that the effects (of the destitution) will occur 'immediately' [automatically]. He did not say they would be produced 'by' or 'after the communication' of an appropriate provision. One need only read what he wrote.

The Royal Patent of 28 October 1780 in favour of prince Eugenio Ilarione of Savoy Carignano and the marriage he «contracted in nullity in France» refers to n. 3 of the above mentioned Patents and therefore the reference made to it by one commentator to deny the automatic effect of n. 2 of the Patents is plainly wrong.

In more recent times, the institution of prior consent was further confirmed by the Civil Code of 1942 which is still in force. It had kept a formulation practically identical to that of the old code. This only goes to prove the falsity of asserting that this institution was introduced into the Italian Civil Code of 1942 by the fascist regime, in a bid to invalidate it. Moreover, for quite a long period, it was not even considered contrary to the Constitution of 1948, and remained both as a disposition of the Civil Code (till 1975); and also from the point of view of the Head of State's consent regarding career diplomats and the military (at least till 1976), i.e. for those (like members of the Royal Family at the time) who occupied positions which carried the image of the Italian State. The premises to the above mentioned Letters Patent of Amedeo III of Savoy for the princes of the House contain express references to «the splendour of the Crown and the good of the State».

For a closer understanding of the case we need only bear in mind that this institution exists on three different levels : that of the common family, governed by the Civil Code; that of citizens with the special function of representation; and that of the Royal Family where the rules partly follow the general common ones and partly follow norms of their own which are either added or substituted and can be traced back to the powers of the king as the head of a political unit, the Royal Family of Savoy. These relatively complex principles were widely known during the Kingdom and even today can be found in the manuals of the time.

This classification is much to the point since a superficial reading could easily lead one to say that the so-called abrogation on the part of the Republic, which has neither king nor royal prince, implied in this norm – the king's power of consent – could somehow bring influence to bear on the dynastic norms of the House. In actual fact these are on a completely different level, and quite immune from any attack from the Republic. This was so obvious that the legislator did not even consider it his duty to proceed to an explicit abrogation of the norm.

Passing on to the structure of the institution, it should be observed that this consent (consent of the parents or royal consent) is worded to be always prior to the marriage, otherwise it would amount to approval of a marriage that has already taken place, and which is a completely different matter governed by other principles. From this is derived the consolidated rule according to which consent to the marriage is presumed denied until it has been proved to the satisfaction of the official who celebrates the marriage (Ord. civil status).

Among the rules expressly referred to by the Statute is the Salic law which already forms part of the baggage of dynastic norms of the House of Savoy. On the basis of this the Dynasty could not have changed this norm unilaterally since the State might have considered other subjects in line of succession and therefore suitable for holding the position of king without conforming to the dispositions of the Salic law. Actually this law is not the original one which dealt only with feudal issues. It is a collection of rules and principles traditionally ascribed under that name, but whose main concern is the exclusion of women from the dynastic succession. This is a principle observed by the

House of Savoy since time immemorial. In the abstract it might have been taken to contrast with the principle of equality proclaimed by the Statute, but was expressly referred to that principle in order to avoid any doubts or other possibilities.

But to make so much of the reference to the Statute, reducing it to implying the abrogation of dynastic norms in order to conform to the Statute, would be completely off the track.

Once the Statute had fallen with the establishment of the Republic, though without any proclamation or even a precise date, the Dynasty found itself in a *sui generis* situation and continues to act in the light of the Statute, in spite of the fact that its connection with the State of Italy (art. 2) had lapsed. By acknowledging the elimination of the Statute, the Dynasty might then be prompted to recognize the Republic, which King Umberto II took good care not to do; on the other hand the House of Savoy could not, in any case, deny the principles solemnly proclaimed by the Statute, and first of all the principle of constitutional monarchy, without doing away with the most glorious page of its existence as a Royal Family and indeed the future of the monarchical idea. The consequence, resumption of an absolute monarchy, was unthinkable. In short, for the House of Savoy it is as though time stood still after 1946, the time of the *referendum* on institutions, the results of which were contested by the king who then went into exile without abdicating.

Moreover since he was no longer a sovereign exercising his powers, but only the Head of the House, it would have been impossible to introduce anything new in the dynastic system of the Family without violating or putting at risk the very existence of the entire tradition which constitutes the body of laws of the Family as a 'political unit' under the direction of its Head (O. RANELLETTI, *Istituzioni in diritto pubblico*, Padua, 1934, p. 174).

All this was perfectly clear in the mind of the last Savoy king, who also put it in writing, distinguishing the role of the Sovereign from that of the Head of the House, and as a father. Only, for those willing to understand, we have the manifold context of his cautionary letters to his son before Vittorio Emanuele went ahead and married without his prior authorization.

These were by no means private family letters. In that context they would have been an exception, expressed in a completely different tone. They were intended as a warning and notification on the part of the Sovereign and Head of the House, with the pressing request for a signature to confirm that the letter had been read and given serious attention, signed to that effect on the double copy attached, one copy to be saved as evidence of an official act (otherwise what would be the point?). It is futile to attempt to mask the content and legal significance of the letters by starting out to highlight the problem of how they came to be published. If the king had wanted to prevent this eventuality he would not have seen the need to ask for a copy to be kept (at the very least) as a reminder, otherwise he would have seen fit to destroy it. After all he had time enough.

Another aspect that should be bourn in mind is the rule that imposes the automatic effects of the dynastic succession. This does not even allow the king to replace one successor to the throne by another. After Vittorio Emamuele had removed himself from the Savoy Family by rejecting and violating the principal prerogative of its Head, i.e. prior consent to the marriage, incurring *ipso iure* the foreseen destitution, it would have been impossible for Umberto II to defenestrate the legitimate heir in favour of his son. His role and dignity and the moral fortitude he had shown throughout his life would have prevented him.

In coherence with what he had explicitly communicated in the letters to his son, then on the point of contracting marriage without the royal authorization, and in conformity with the Royal Patents of 1780, King Umberto II struck out of his will the additional portion of his financial legacy set aside for his son as heir to the throne. This is a fact. The declaration made by the Queen and the three sisters, also signed by the executors after the will was opened, carries no legal validity. Today this declaration has been published with an air of the greatest importance by part of the monarchist press, although not one of these signatories ever had the power to recognize or create any heir to the Throne. Besides this, since they were all excluded from the dynastic succession by the above men-

tioned Salic law, they would never have been able to make any change in what the well known and fundamental legal regulation had already prevented, according to which no one can transfer to others what they do not themselves possess.

In conclusion, and setting aside personal affections, elective affinities and other such, and looking upon the matter solely from a literal viewpoint in the spirit of the dynastic laws, time and again we find confirmation of the legitimate position of Amedeo of Savoy, from the very first called to succeed to the Crown as Head of the Royal House of Savoy, whose role it is to hold high the name and rank of the entire Family, and to which the monarchists should give notable proof of their loyal collaboration.

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