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The Interplay Between Identity and Difference in Modern Society

To start with, I would like to recall an old anecdote. Pierre Vidal-Naquet, in his book *Flavius Josèphe ou du bon usage de la trahison*, tells us that, during last world war, a group of fighters belonging to Irgun, a well-known Zionistic organization, brought the Jewish historian Flavius Josephus to trial and found him guilty of treason¹. They condemned him to the capital punishment nearly two thousand years after his death. Even though the behaviour of this writer has often been very ambiguous, there is no denying that such a posthumous judgement appears to us quite unfair. After all, this man had to face an extremely difficult choice, the choice between an exasperate defence of his identity and the need to understand his enemies in order to survive. As everybody knows, he chose the second horn of the dilemma and started behaving politically. No doubt, at Jotapata Josephus surrendered to the Romans, but the only alternative would have been committing suicide. That was the outcome of Masada siege.

Indeed, other stories come to an end in an opposite way: the destruction of the enemy takes the place of the self-destruction of the hero. The narrative mechanism, however, is exactly the same. In both cases the clash between identity and difference is portrayed as a mortal fight. Either the protagonist or his opponent, the antagonist, is doomed to die.

But here rises our problem.

⁽¹⁾ P.Vidal-Naquet, *Flavius Josèphe ou du bon usage de la trahison*, Minuit, Paris 1977, *Il buon uso del tradimento*, preface by A.Momigliano, Editori Riuniti, Roma 1992, p. 33.

The aim of this paper could be summarized as an effort to give a philosophic answer to the following question, which is not at all rhetoric, as it may seem. I wonder whether identity has to be framed, like in the anecdote I told above, as an absolute value, an “all-or nothing” question, or, on the contrary, identity is a value that is always very complex, fuzzy and admits degrees, nuances and trade-offs.

Sure, individual beings are never like the proverbial *tabula rasa*; indeed they would not exist outside society. They need a shared culture and a common ground². The group, therefore, is a great source of strength for all of us. Moreover, it should be added, sometimes it is the case that identity must be defended firmly, at all costs. As far as identity is under discussion, we cannot shift questions of principle. But, on the other hand, there is something very odd in requiring under all circumstances supererogatory behaviours or heroic acts. Identity, far from being conceived as a Procrustean bed, must be seen, at least in my view, as a home, that is as the place where people wish to live their normal life³. From a liberal standpoint, the group cannot swallow up the individuals and differences cannot be always felt as something hostile.

The importance of these problems is greater at present time, in a multicultural society, than once.

Nowadays, after the fall of the iron curtain, a brand-new ideology is spreading out: the wrong theory according to which this is the epoch of the death of all ideologies. Actually, there is at least one sense of the term ‘ideology’ in which ideologies are fully alive. This usage attaches a positive value to the fact that someone belongs to a nation, people, group or society. Being part of a whole raises valuable feelings of solidarity among the members of the group, but unreasonable suspicions, if not hate, on strangers are also stemming from that fact.

One may object that this phenomenon is due to become less important in the time being, when we shall finish to build up a full global society. Exchanges and communications are already very quick. Lawyers are increasingly talking about transnational law and they acknowledge that the very idea of State, with a territory of its own, reached a crisis from both a theoretical and a practical point of view. Sociologists came to think that we are all living in a «horizontal society» where authority is losing ground while television, together with modern technologies, exerts more and more a weighty influence on collective behaviours⁴. Last, but not least, almost everybody speak English.

(²) According to W.Kymlicka, *Liberalism, Community, and Culture*, Clarendon, Oxford 1989, pp. 2-3, «The individualism that underlies liberalism isn’t valued at the expense of our social nature or our shared community. It is an individualism that accords with, rather than opposes, the undeniable importance to us of our social world».

(³) See A.B.Yehoshua, *Bizkhuth hanormaliuth*, Schocken, Tel Aviv 1980 (*Elogio della normalità*, Giuntina, Firenze 1991).

(⁴) See L.M.Friedman, *The Horizontal Society*, Yale University Press, New Haven-London 1999.

Here it is not possible to pay to those problems all the attention they deserve, but one thing is crystal-clear. If we accept Marshall McLuhan's expression 'global village', it is the second word, 'village', that should be stressed, not the first. In fact, we never saw such exaltation of small groups and of particularistic identities like today. Adopting Roland Robertson's pun, one could suggest that our civilization, more than global or simply local, is «glocal»⁵. At present there is a world market, but it does not exist yet a world culture. Too often media and modern technologies are used as a vehicle to express ideas that do not belong to modernity, as it emerged in western countries. For that reason we should avoid to confound advanced technologies with modern progressive thought, i.e. with the political theory which emphasizes the value and the freedom of each individual. We have a suspicion that there is not much use in trying to fight, like von Hayek, against the tribal experiences that shaped our mind through past ages. Big society is too cold and impersonal to be a satisfactory substitute for the warmth of face-to-face society. It is not by chance if even an analytic thinker like Joseph Raz inquires about the concepts of attachment and uniqueness and wonders whether parochial knowledge is possible⁶.

This is a "wired" yet tribalized global community. In a nutshell, notwithstanding the fact that our lives are intertwined and, thanks to the rapidity of communications, the globe has been electrically contracted, there exists no melting pot. The world looks like a multi-ethnic city, for instance London, New York, Jerusalem and Trieste at the beginning of XX century, where different groups use to live close together but they never really meet⁷. There is no fusion at all. If we are lucky, there is coexistence and the different racial groups become good neighbours, but a symbiosis is hardly conceivable.

Coming back to the all-or-nothing idea of identity, viewed as something excluding difference, the situation worsened since the end of the cold war.

In the Sixties and in the Seventies the Italian psychoanalyst Franco Fornari tried to show that war is a way out to escape overwhelming fears inside human beings. It implies, he maintained, the great psychological advantage that a clearly determined opponent takes the place of an indeterminate anguish. But war, as it is based on the paranoid working out of mourning and on the axiom *mors tua vita mea*, very often is a quite unrealistic solution of our problems. According to professor Fornari, however, the risk of an atomic war on planetary scale had changed the situation. The danger of an absolute destruction and the supposed impossibility of a limited war (but we had Vietnam!) helps us to draw a different and more

⁽⁵⁾ R.Robertson, *Globalization. Social Theory and Global Culture*, Sage, London 1992.

⁽⁶⁾ J.Raz, *Engaging Reason. On Theory of Value and Action*, O.U.P., Oxford 1999, p. 132 and Id., *Value, Respect, and Attachment*, C.U.P., Cambridge 2001.

⁽⁷⁾ See the words of D.Shahar on Jerusalem reported by C.M.Martini, *Verso Gerusalemme*, Feltrinelli, Milano 2002, p. 70. About Trieste see R.Bazlen, *Intervista su Trieste*, in *Scritti*, Adelphi, Milano 1984, pp. 242-255.

symmetrical conclusion which could be summarized in two aphorisms: *vita tua vita mea* and *mors tua mors mea*. War ceases appearing as a “rational” solution⁸.

Well, now, with the fall of Soviet Union, one of the two empires, the emotional and moral milieu changed again.

At present we live in a period of great instability, everybody is afraid of terrorism and we have the phenomenon of kamikazes. On the one hand we get the impression that violence is no more under control. Around the world there are too many people who caught a sort of disease that we could call “Samson complex”: some members of a group are ready to sacrifice themselves in order to kill as much “enemies” as possible («Let me die with the Philistines!»). The individual is annihilated on behalf of a collective nightmare. This is a universe of desolation like the pub in the hereafter imagined by the Israeli writer Etgar Keret, where the faces of some of the characters that are popping in — suicide terrorists — seem unfinished puzzles. On the other hand the remedies to this situation are not much effective and, sometimes, they are worse than the disease. Many times there is a spiral of acts of war and of retaliation, which, if compared with the advantage of cooperation, go clearly against the interests of all the parts involved in the conflict.

It goes without saying that the philosopher cannot find an operative solution to such problems, but I do think that it could be somehow helpful if we try to analyse the attitude underlying the misleading idea that different systems of values cannot coexist.

Understanding that such an approach is untenable, changes all over the moral context of the previous discussion. I want to show why.

Many authors have been exploring the possibility of a group identity, which, far from being intolerant, pays the due respect to everybody. Until now, however, if a writer were pursuing such a goal very often found himself between the devil and the deep sea.

In fact, he could take sides either with universalism or with strong relativism, but both those positions are plainly unsatisfactory.

Universalism is the old answer. This kind of rationalism is the son of time-honoured illuminism. Its basic idea is that Reason is one and the same for everybody and, therefore, we can reach a comprehensive conception of values that could be accepted by all human beings. We all are world citizen and we have to overcome the obstacles to complete equality. Differences are illusory, due to self-deception and to narrow-mindedness, or they are only superficial; in any case, a true philosopher can easily bridge them. It was shocking to discover with Isaiah Berlin how this noble dream very often transforms itself into the nightmare of modern totalitarianism. Actually, as far as values are concerned, every reduction to a set of common standards is impossible and the attempt to unify this field, even in order to

⁽⁸⁾ F.Fornari, *Psicoanalisi della guerra*, Feltrinelli, Milano 1966 and Id., *Psicanalisi della situazione atomica*, Rizzoli, Milano 1970. These two books had been translated into French.

preserve human dignity, many a time is felt as an intolerable violence.

Strong relativism is the new answer. Its main tenet is that, since different systems of values are incommensurable, no true understanding, least of all rational discussion, is possible between men who belong to different cultures. Karl Popper called this attitude «the myth of the framework»⁹. Such an approach now very trendy has many sources: old historicism, certain theories about language spanning from Herder to Sapir-Whorf hypothesis, the decline of western-centered ethnology that was sanctioned once and for all by Levi-Strauss's *Tristes Tropiques*¹⁰, the sense of guilt of European countries from colonialism, the uneasy feeling of Americans about the past practice of slavery and, more recently, of racial segregation, organic and holistic social theories, communitarianism in ethics, postmodernism, no-global movements and so on. Strong relativism reaches a paradoxical result because, according to this theory, each conflicting viewpoint is considered, I dare say, «absolute». This absolute nature may seem counter-intuitive but, if we maintain that, from Hart's internal point of view¹¹, different value systems are mutually exclusive, we cannot help drawing the conclusion that all our values must be construed from the particular standpoint of a single normative system. Hans Kelsen had been very clear about that, treating the relation between law and morals: «Here, indeed, such conflicts are possible—for example, if a certain moral order forbids taking of human life under all circumstances, while at the same time a positive legal order prescribes the death penalty and authorizes the government to go to war under the conditions determined by international law. In this dilemma, an individual who regards the law as a system of valid norms has to disregard morals as such a system, and one who regards morals as a system of valid norms has to disregard law as such a system. This is expressed by saying: From the viewpoint of morals, the death penalty and war are forbidden, but from the viewpoint of law both are commanded or at least permitted. By this is only expressed, however, that no viewpoint exists from which both morals and law may simultaneously be regarded as valid normative orders. No one can serve two masters»¹². In brief, strong relativism turns out to be a sort of moral (or better, meta-ethical) solipsism as this self-oriented approach hinges on the pivotal belief that we cannot go outside the sphere of our personal values, just in the same way epistemological solipsism believes that the self is aware of nothing but its own experiences and states of mind.

Now the question is whether one could find a middle path between the old and the new answer, between the exaggeration of universalism, which tries to flatten all differences,

(⁹) Karl R. Popper, *The Myth of the Framework. In Defence of the Science and Rationality*, edited by M.A. Notturmo, Routledge, London-New York 1994.

(¹⁰) C. Levi-Strauss, *Tristes Tropiques*, Plon, Paris 1955.

(¹¹) See H.L.A. Hart, *The Concept of Law*, O.U.P., London 1961.

(¹²) H. Kelsen, *Pure Theory of Law*, translated by M. Knight from *Reine Rechtslehre* (1960), second, revised and enlarged edition, University of California Press, Berkeley, Los Angeles, London 1967, p. 329.

equating every man to another, and the exaggeration of a belligerent strong relativism which is populated by people extremely resentful against anyone who wants to set a limit to identity claims, even though this happens in order to ensure coexistence.

There is, however, a third thesis that matches our theoretical needs. We could label such an approach under the name of soft relativism.

On the one hand, this view has in common with strong relativism the belief that values are neither true nor false, for they are created, not discovered, by human beings. Following this philosophical conception based on the rejection of cognitivism in ethics, to speak of objective values is a plain nonsense, since values, far from being embedded in facts or entrenched by a superhuman Reason, depend completely on our responsible choices, preferences and tradition.

On the other hand, soft relativism does not subscribe to, and does justice of, strong relativism's tenet that different cultures or identities are incommensurable. It drops the prejudice according to which a reciprocal understanding and a frank discussion would be impossible inasmuch as different mentalities and different feelings of "belonging" are at stake. On top of that, this approach does not exclude on principle the simultaneous qualification of the same actions on the footing of the viewpoints of a plurality of evaluative standards. Consequently, we can at the same time take into account as valid, or equally worthy of consideration, the rules of distinct normative systems. In sum, on this view, solipsistic and self-centered attitudes are no more available and their place is taken by multicultural interplay and, sometimes, by an open challenge between different ways of life. Furthermore, the "all-or-nothing" identity concept must be accordingly substituted by a much more complex one. Let's take a closer look at this issue.

There is no doubt that cultural differences were clearly perceived even in the antiquity and in the Middle Ages. In the ancient world, however, conflicts were avoided keeping each group separate from its neighbours. According to the personal criterion of validity, each nation was expected to follow its laws and usages. Something of the like happened in the Ottoman Empire which adopted the so-called "millet system"¹³. With a few meaningful exceptions, for instance that of the Roman Empire, this static pluralism was prevailing by and large. Normally, nobody had the opportunity to raise questions like mixed marriages or like the problem of Islamic veil in French schools. Moreover, everyone was pinned to his status, role or task. Changes were very difficult. Issues like gender question not only were still

(¹³) See W.Kymlicka, *Multicultural Citizenship*, O.U.P., Oxford 1995, p. 156: «There are other forms of religious toleration which are not liberal. They are based on the idea that each religious group should be free to organize its community as it see fits, including along non-liberal lines. In the 'millet system' of the Ottoman Empire, for example, Muslims, Christians and Jews were all recognized as self-governing units (or 'millets') and allowed to impose restrictive religious laws on their own members». This system «was, in effect, a federation of theocracies» (op. cit., p. 157).

unsettled, but they were also utterly unthinkable: to imagine that someone could pose them at those times is nothing else but a clear anachronism. After all, caste system in India embodies this situation in the extreme.

On the opposite, western modern societies are by far much more dynamic, open and diversified. Owing to the division of labour and to the different roles we use to play in social life, we have to apply to human behaviour a variety of standards of judgement. The typical example of this situation is the case of a judge who, in his office, is bound to follow positive law and not his religious or personal convictions. There are things we cannot abstain from saying in our quality of physician, counsellor, priest, lawyer, father soldier or teacher. And — that is the novelty — every one of us has many functions, partial identities, and duties, at the same time. Only in the contemporary history it is possible to be simultaneously a “Jew”, an “atheist” or a “secular man”, and a “good Italian citizen”¹⁴. Should we speak then, to use a fashionable idea, of a multiple self¹⁵? I don’t really think so. But — beware — I am not aiming at coming back to an outdated theory of mind. Here the topic at issue is not a psychological one, since we are debating about identity seen as a normative problem¹⁶. The point I want to emphasize is simply that the single individual has to compare different standards, establish a hierarchy of norms, and ought to make clear why and in which cases he is ready to leave aside, *for good reasons*, some of the rooted convictions he otherwise would follow. This is not merely a balance between first-order reasons; on the contrary, this approach toward conflicting values admits of second-order exclusionary reasons, that is formal techniques like Raz’s authority principle or like Schauer’s entrenched generalisation-based decision-making¹⁷.

On this model individuals should not be entirely absorbed in any given group. We must leave room for fairness and for public procedures capable to cool down violent passions raised by identity feelings. In this sense, modern societies have to meet the widespread demand for rule of law and legal certainty. Moreover, the circumstance that each of us partakes of many identities and that we are often compelled to implement only second best solutions does not imply that we all are guilty of hypocrisy or, worse, does not mean that we have a split personality. In fact, during his private life, when he is not dealing with a public function, a judge or a civil servant is no longer requested to conceal his ideals and, in any case, it is up to the single individual, all things considered, to spell out differences and to

⁽¹⁴⁾ See J.Waldron, *Minority Cultures and the Cosmopolitan Alternative*, in «University of Michigan Journal of Law Reform», 25/3, pp. 751-93.

⁽¹⁵⁾ See J.Elster (ed), *The Multiple Self*, C.U.P, Cambridge 1986.

⁽¹⁶⁾ See U.Scarpelli, *La meta-etica analitica e la sua rilevanza etica*, in «Rivista di filosofia», 71 (1980), pp. 319-353.

⁽¹⁷⁾ J.Raz, *Practical Reason and Norms*, Hutchinson, London 1975; F.Schauer, *Playing by Rules*, Clarendon, Oxford 1991.

reconstruct unity.

In the horizon of soft relativism, identities are always complex and, *to a certain degree*, problematic, negotiated or *in fieri*¹⁸. Belonging is no given fact even when it is made to depend on inborn or social features. On the contrary, at first glance we have to deal with a cluster of cultural memberships, which are continuously in part rebuilt, restated, modified, by way of our collective and individual choices.

In my experience, the non-relativist who thinks to know «the Truth that makes us free» need not be a fanatic. Perhaps he is tolerant simply because he is contrary to any forced conversion of “stray sheep”. The fanatic, however, cannot be a soft relativist. He is always a coherent over-simplifier who wants to pursue a goal at all costs, for the pure fanatic is a principled man convinced he is holding a trump in his hand¹⁹. In the light of the present analysis, a fanatic is not someone who follows the “wrong” values, but is someone who sacrifices everything, maybe even himself, to an “absolute” value, which is taken to be incomparable with other values. “Duty”, “fatherland”, “bravery” and “fellowship”, in themselves, are good qualities, they are by no means the hallmark of nazism; a person, however, becomes a nazi when he or she starts to think that the above-mentioned lifestyle is the only viable and, vis-à-vis the supreme enterprise he or she is aiming at, the sufferings of other human beings, seen as *Untermenschen* or negligible entities, do not count in the least. To my view the argument of sacrifice, even of self-sacrifice, however convincing it may be, represent a slippery slope in ethics.

Sure enough, soft relativism helps us to overcome the narcissistic commonplace according to which each culture is something exceptional or unique, like Leibniz’s monads, that cannot be compared with the superstitions and the primitive thinking of the “aliens”, whom are stigmatised both as barbarians and infidels²⁰. Since it opens itself to the need that conflicting cultures could dialogue and coexist, this kind of relativism puts an end to the prejudice that denies the possibility of a rational dialogue and of compromises between the bearers of distinct identities on the grounds of the fact that identity is often defined as typically non-negotiable. In particular, this approach justifies neither the oppression of minorities in the name of a difference-levelling universalism nor the intolerance of aggressive minorities invoking their exclusive peculiarity, that is what they call, using western political jargon,

(18) This happens even when religious identity is at stake, see S.Ferrari, *Lo spirito dei diritti religiosi. Ebraismo, cristianesimo e islam a confronto*, Il Mulino, Bologna 2002 and «Daimon, annuario di diritto comparato delle religioni», 2001/1.

(19) I don’t find fully convincing Hare’s analysis of fanaticism in the terms of his universality principle. See R.M.Hare, *Moral Thinking*, O.U.P., Oxford 1981, chap. 10.

(20) There are authors who recently argued for the incompatibility between strong relativism and liberalism, see for instance J.Crowder, *Pluralism and Liberalism*, in «Political Studies», 42 (1994), pp. 293-305, and J.Gray, *Where Pluralists and Liberals Part Company*, in «International Journal of Political Studies», 6 (1999), pp. 17-36.

“their inalienable rights”. Provided that soft relativism is not a sceptical philosophy for which “anything goes”, this attitude tries to build up a public space where both law and politics are not necessarily lumped with a definite moral, religion or whatever distinct identity-mark. Consequently politics becomes more realistic, it develops anti-ideological strategies that, far from being the blind rephrasing of the creed which defines one’s own identity, are keenly aware of the immediate interests of a group. This sphere is not only an agora where free speech and dialectics are granted, but is also a place in which decision-taking agencies operate. And it is very important to notice that democratic methods too are formal techniques, in the sense that their strength and validity does not derive from the goodness of substantive reasons warranting them. To win the elections does not mean to be right, to be a just or fairer party and — especially this is noteworthy — does not entail that a given cultural membership is preferable or intrinsically superior over any other. Hence, on this view the problem of moral justification remains an open question, an unending quest. By the way, the existence of this “commonwealth” — to use Hobbes’s term²¹ — explains why it would be utterly wrong to cite Christianity, or any other religion, in the preamble of the European constitution.

I have not the least intention to celebrate here the secular ideal of *laïcité* or to trace back such a heritage to historical events that everybody knows. Mine is only a modest attempt to grasp some of the theoretical import of what happened in modern age. Anyway, my interpretation is not at all as obvious as it may seem, since many western scholars are still tempted to reject this view; those scholars take a considerable step backward paying their tribute to natural law (which is an universalistic approach) or to a confused historicism originating from the ashes of Marxism (which goes along with the undervaluation of liberal culture and, of course, has a lot to do with strong relativism’s incommensurability).

The sole historical conclusion I want to draw here is the following. It may be argued that the process that brought to light the modern idea of State together with legal positivism is the very process that made modern political science ripen fully. Among the thinkers who discovered politics and had a share in the invention of the techniques by means of which different identities can coexist, I wish to mention Machiavelli, Hobbes and Montesquieu. On the one hand, these authors, notwithstanding their disagreements, understood that law, moral and politics are basically heterogeneous, like “words” and “swords”, and, on the other hand, they realistically cared actual powers’ balance — given that only *le pouvoir arrête le pouvoir* — rather than collective passions and ideologies²². Flavius Josephus too was, to my way of

(²¹) Leviathan: «For by Art is created that great Leviathan called a Common-Wealth, or State, (in latine Civitas) which is but an Artificiall Man [...]» (*The Introduction*).

(²²) My view is at odds with Gramsci’s reading of Machiavelli, from which it departs radically, but it is close to I.Berlin, *The Originality of Machiavelli* (1972), now in Id., *Against the Current*, Hogarth Press, London 1979, and takes into account F.Fornari, *Il collettivo e le strutture affettive del Principe di Machiavelli*, Unicopi, Milano 1981.

thinking, a forerunner of this political awareness for the same reasons for which Arnaldo Momigliano, commenting *Contra Apionem*²³, complained that «[a]ccording to Flavius, God does not impose the Law on Israel through Moses, but, on the contrary, it is Moses that imposes God to Israel through the Law»²⁴. This criticism brings back to my mind a bizarre page of the *Pure Theory of Law*, where Kelsen maintains that the reason for the validity of the Ten Commandments is not the *fact* that God issued them on Mount Sinai, as, on Kelsen's view, God Himself should be empowered by an higher norm asserting that «One ought to obey God's commands»²⁵.

It will not pass unnoticed that the theoretical framework of soft relativism encompasses a host of political options. After all, meta-ethics cannot dictate a definite ethical doctrine or suggest a policy.

More specifically, liberal thinkers exhibit various views about the vexed question of multiculturalism.

With regard to this issue, nobody can ignore the long-standing debate between neutralism and perfectionism²⁶. According to perfectionists, «liberalism, like its rival political ideals, necessarily presupposes a conception of the human good, which is not simply procedural, but also ethically substantive. The liberal conception of the good is indeed rather specific, being focused on the values of human rationality, autonomy, self-reliance, and self-development»²⁷. By contrast, «[i]n its more general formulation neutrality means that public action should discount all personal differences that are politically irrelevant (from ethnic origin to affiliations, religious beliefs, moral values, skin colour, and sexual preferences) so as to treat all citizens as equals. [...] Anti-perfectionism entails that the state and political agencies have no business in trying to improve citizens according to any conception of what is valuable in life or how they should live. Conceptions of the good and religious, moral or metaphysical views should be extracted from control by the political authorities and left to individual freedom and choice. Anti-perfectionism prescribes a public blindness to personal differences and does so for two reasons: on the one hand, it inhibits the interference of religious and moral disagreement in political matters and, on the other, it prevents any particular set of convictions or way of life from being favoured and thus giving rise to advantages in social position or standing. Peaceful coexistence and equal liberty are the two political goals pursued by liberal neutrality, while anti-perfectionism is the means by which such goals can

(23) See Flavio Giuseppe, *In difesa degli ebrei (contro Apione)*, edited by F. Calabi, Marsilio, Venezia 1993.

(24) A. Momigliano, *Un'apologia del giudaismo: il "Contro Apione" di Flavio Giuseppe*, in Id., *Pagine ebraiche*, Einaudi, Torino 1987, 63-71, p. 66.

(25) H. Kelsen, *Pure Theory of Law*, cit., pp. 193-194.

(26) The term "perfectionism" was introduced by J. Rawls, *The Theory of Justice*, Harvard University Press, Cambridge (Mass.) 1971, II, 5, § 50.

(27) A. E. Galeotti, *Toleration as Recognition*, C.U.P., Cambridge 2002, p. 37.

be attained»²⁸.

Neither position is entirely satisfactory. First of all, it should be remarked that the term “liberal neutrality” is both unhappy and inaccurate. Reliance upon procedures, formal techniques, and exclusionary reasons is a very good method of building up a public sphere where many differences can be accommodated. This area, however, is by no means an «hospitable empty box»²⁹ or a logical construction; on the contrary, it presupposes a strong commitment in order to avoid certain kinds of discriminations considered unfair. Indeed, a judge who chooses to pursue legal certainty and applies positive law without favouring one side more than another is impartial, but, inasmuch values play a role and binding decisions are taken, he is not “neutral” like a pure scientist. Coming to liberal perfectionism, the remark that this approach too is flawed is inescapable. The institutional framework, whose intended function is to assess the conflicts between different identities or creeds, cannot enjoy the mere status of one identity among the others. In such a case there would be only a set of different memberships on equal footing, liberal doctrine would be a “sectarian liberalism” strictly tied to western civilization and every attempt to export it would be labelled as an act of imperialism.

In the last decades liberal thinking tried to cope with this intractable problem. Most of the authors sought a compromise in a way or in the other, promoting a considerable shift from standard liberalism. They partly rejected strict institutional blindness, transforming toleration into something that, far from employing «a distant, non-differentiating public stance on various opinions», entails «public concern, positive attention, and consideration for differences»³⁰. Furthermore, liberal culturalism³¹ and liberal nationalism³² stressed the importance of the context of choice of individual decisions and many scholars argued for “collective rights”.

A full examination of these thorny problems clearly exceeds the limits of my paper. None the less, going against mainstream liberalism, I must admit that I am fairly suspicious about so-called “collective rights” both for practical and theoretical reasons. Very often we are under the illusion that it is possible to settle conflicts uttering the magic word “right”, but, after all, most of times we need sharp rules and sensible policies rather than a host of incompatible rights. Not only the conceptual tool of human rights is abused, but talking of rights has also a symbolic additional value that makes more difficult to move from the

(²⁸) *Ibidem*, p. 28.

(²⁹) *Ibidem*, p. 37.

(³⁰) *Ibidem*, p. 194.

(³¹) The ‘state of the debate’ is summarized by W.Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, O.U.P., Oxford 2001, pp. 17-66.

(³²) See Y.Tamir, *Liberal Nationalism*, Princeton University Press, Princeton 1993 and C.Gans, *The Limits of Nationalism*, C.U.P., Cambridge 2003.

respective positions and reach a compromise. To secure peace and to spare sufferings, we have to be pragmatic and flexible. Moreover the analogy between collective and individual rights does not work, since the latter are closer to freedom meant as self-government of a group and as the participation of the individual to political life, while the former are tied to negative freedom, seen as non-interference. In brief, collective rights, like social rights, but unlike fundamental rights, require some, always questionable, ideal of substantive justice and presuppose a special support, assistance or protection of certain identities at the expense of other goals.

Be as it may, leaving those problems to a further discussion, I want to make a few points.

First, even if we were ready to talk of minority rights, it should be plain that, from a liberal point of view, the “rights” of a group can never prevail over individual rights. As Will Kymlicka puts it, «liberals can and should endorse certain external protections, where they promote fairness between groups, but should reject internal restrictions which limit the right of group members to question and revise traditional authorities and practices»³³.

Second, we can accept neither forced integration in the prevailing culture, nor compulsory membership in a minority group. Accordingly, we should not compel individuals to be free or autonomous, in a word, to subscribe to the liberal conception of good life.

Third, there is a persistent need of an area more or less extended of institutional blindness. In spite of the crisis of the concept of territorial State, we are not to renounce a public sphere where it would be possible to deal with conflicts and take common decisions by means of accepted formal procedures which do not privilege a particular identity over any other.

Four, it is very important to enhance individual responsibility. We should promote international courts that, as far as crimes against life and liberty are concerned, would be fully capable to abstain from considering group fidelity as an excuse or an extenuating circumstance.

Five, liberal neutrality, as we have seen above, is not at all “neutral”. It is the outcome of the commitment of many people and it cannot last without being defended. On top of that, it is a well-known fact that European secular tradition had been moulded during religious wars at the price of terrible bloodsheds. It is historically true that European nations fought to free civil society from theocracy, but it would be wrong to argue, as strong relativists do, that our coexistence techniques are, or should be, part of a specific cultural membership only. On the contrary, I highly appreciate Kymlicka when he says: «All cultures have illiberal strands, just as few cultures are entirely repressive of individual liberty. Indeed, it is quite misleading to talk of ‘liberal’ and ‘illiberal’ cultures, as if the world was divided into completely liberal

⁽³³⁾ W.Kymlicka, *Multicultural Citizenship*, cit., p. 37. The author considers also the case of «the clause in Egyptian constitution guaranteeing freedom of conscience’ which «has been interpreted so as to exclude freedom of apostasy» (op. cit., p. 82).

societies on the one hand, and completely illiberal ones on the other»³⁴. Coexistence is a problem all nations and cultures have in common. It must not be dealt with in a spirit of crusade; even democratic and secular solutions can and must be realistically challenged, criticized and improved accepting every contribute. On the contrary, we would be very shortsighted if we renounced to bring forward this topic for fear to fall in the notorious ethnocentric prejudice. This fear along with the maxim “live and let live” already fostered too many dictatorships in the Third World.

(³⁴) W.Kymlicka, *op. ult. cit.*, p.94.