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GOOD GOVERNMENT,  
GOVERNANCE,  
HUMAN COMPLEXITY

Luigi Einaudi's legacy and  
contemporary societies

Edited by  
PAOLO HERITIER and PAOLO SILVESTRI



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GOOD GOVERNMENT, GOVERNANCE, HUMAN COMPLEXITY

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PAOLO SILVESTRI

THE IDEAL OF GOOD GOVERNMENT IN LUIGI EINAUDI'S  
THOUGHT AND LIFE: BETWEEN LAW AND FREEDOM\*

PROLOGUE

There has been no authentic liberal thinker insensible of the problem constituted by the relation between freedom and law. It is a problem that can be stated, in a nutshell, as the need to avoid two the extremes of law without freedom or freedom without law, that is to say, either absolute power or absolute anarchy, the extreme of law that shackles, confines or paternalistically guides freedom, or the extreme of absolute freedom that destroys its own conditions of possibility. However, it is important to avoid the temptation of configuring the two extremes in dichotomic, oppositional and static terms, as if the problem were Freedom *versus* Law. This would invite a twofold risk: on the one hand, that of configuring the law consistently and exclusively as a coercive act, which thus inevitably coerces freedom, and on the other hand, the risk of failing to grasp that the real problem is obedience to the law – but an obedience by virtue of which the law is not perceived as coercive, and is felt instead as an obligation complied with by *free* consent. In this perspective, the problem of human freedom appears not only as a problem of *freedom under the law*, but also as an appeal for “*freedom from the law*”. It is an appeal to

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\* This article is a translated, modified and expanded version of “Legge e Libertà. Cinque variazioni attraverso la vita e il pensiero di Luigi Einaudi”, *Biblioteca della libertà*, XLIV, n. 195 (May-August 2009), pp. 1-31 (English revision by Rachel Barritt Costa). It has also been used and delivered as the basis of my “Luigi Einaudi public lecture”, *The Dream of Good Government* (April 26, 2011), held at the Cornell Institute for European Studies (Cornell University, Ithaca, NY) as Luigi Einaudi Chair Holder. I'm particularly grateful to those who helped me to make this little “American dream” come true and gave me one more chance to do further lectures and debate about my research, as well as to those who gave me a very warm welcome: Luigi R. Einaudi, the San Giacomo Charitable Foundation, Sydney van Morgan, Sidney and Susan Tarrow, Christopher Anderson, Holly Case, Camille Robcis, Mabel Berezin, Karen Pinkus, Timothy Campbell, Annalise Riles, Jonathan Kirshner, Gail Holst-Warhaft, Kora Bättig von Wittelsbach, Cindy K. Greco.

supersede, to go beyond the “Law” (tradition, authority, a scientific paradigm, custom and even the constitutional order), should the law be felt as no longer just and/or justifiable, i.e. no longer legitimate. Yet precisely because an appeal of this nature emerges from the concrete experience of life, it is never foreseeable *a priori*.

I will argue here that Einaudi’s thought reveals an awareness – albeit never made sufficiently explicit in philosophical terms – that the question of freedom has to do with two inter-related problems: the relation of individuals or communities with their respective limits – of which *Lex*, *Auctoritas* and *Veritas* are emblematic figures – and the question of *going beyond* these limits. Limits are to be understood here in the meaning of the foundation or conditions of possibility both of institutions (economic, political and juridical) and of thought and human action. The concept of law I will try to put forward thus does not refer to the version given by legal positivism. Indeed, such a version would have been precluded within the worldview embraced by Einaudi, steeped as he was in the English tradition. Rather, “Law” should be interpreted here – in a broader sense and bearing in mind the necessarily ambivalent relation it holds with freedom – as a figure of the limit.<sup>1</sup>

It is certainly no coincidence that on the one and only occasion where Einaudi ventures a definition of liberalism, he terms it a “doctrine of limits”.<sup>2</sup> It is likewise no coincidence that he never defines freedom, either analytically or conceptually.<sup>3</sup> Fully aware that the problem of freedom is the eternal quandary

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<sup>1</sup> In this paper I refer in particular to the problem of the limit as discussed by P. LEGENDRE, *Della società come testo. Lineamenti di un’antropologia dogmatica* (2001), Ital. transl., P. HERITIER (ed.) (Torino, Giappichelli, 2005); P. HERITIER, “Introduzione”, *ibid.*, pp. 1-31; ID., “Urbe-internet”, vol. 2, *Società post-hitleriane? Materiali didattici di estetica giuridica* (Torino, Giappichelli, 2007). On Legendre’s thought cf. also L. AVITABILE, *La filosofia del diritto in Pierre Legendre* (Torino, Giappichelli, 2004); A. SUPLOT, *Homo juridicus. Saggio sulla funzione antropologica del diritto*, Ital. transl. (Milano, Mondadori, 2006). On the question of the limit, see the fundamental work by P. NERHOT, *La metafora del passaggio. Il concetto di tempo in S. Agostino. Fondamento di una nuova etica* (Padova, Cedam, 2008). Cf., from various different perspectives, P. HERITIER, “Uscire dal secondo millennio? Problemi metodologici nel discorso sulla libertà”, in ID. (ed.), *Problemi di libertà nella società complessa e nel cristianesimo* (Soveria Mannelli, Rubbettino, 2008), pp. 39-104; B. MONTANARI, “Libertà, responsabilità, legge”, in ID. (ed.), *Luoghi della filosofia del diritto. Un manuale* (Torino, Giappichelli, 2009), pp. 27-63.

<sup>2</sup> L. EINAUDI, “Liberalismo” (1944), in *Riflessioni di un liberale sulla democrazia, 1943-1947*, P. SODDU (ed.) (Florence, Leo Olschki, 2001), pp. 65-66.

<sup>3</sup> Though the *Two Concepts of liberty* analysed by Berlin (see I. BERLIN, “Two Concepts of Liberty” (1958), in ID., *Four Essays on Liberty* (Oxford, Oxford University Press, 1969), pp. 118-172) both exist in Einaudi’s speculation, in my judgment, Einaudi’s above mentioned sentence evokes an idea of liberty which cannot easily be conceptualized as “autonomy”, or “absence of coercion”. Though this liberty is difficult to define, it differs from the previous ones because it takes into account the dimension of *time*, which is the proper dimension of man, and seems to be connected to that “man’s look addressed toward the *new* and the *high*”, which I will dwell on later. I discussed

of mankind, Einaudi sounded a warning, precisely when the first distinctions between liberalism and “neo” or “new liberalism” were being drawn. He cautioned that

liberalism is one and one alone and it endures over time; but each generation has to solve its own problems, which are different from those of yesterday and will be superseded and renewed by tomorrow's problems. Therefore even liberals must at all times ask themselves the following searching question: how should I solve the problems of my own day, in such a manner that the solution adopted serves to safeguard the supreme good that is the freedom of man?<sup>4</sup>

Furthermore, it is noteworthy that Einaudi sets his portrayal of the human appeal for freedom within a context that invokes the emergence of the “new”. Even more significant is the fact that he formulates this demand more in metaphorical than in categorial terms, as when he writes “[to] *constantly break down the frontier of the known, of previous experience, and move towards the unknown that is still open to the material and moral advancement of man*”.<sup>5</sup> That Einaudi did indeed have profound insight into the above-described complexity of freedom emerges first and foremost from the emphasis he places, in each of the spheres of human and social activity (*in primis*, the economic, political and juridical sphere), on leaving open the possibility of *change*. The same perceptive awareness was expressed elsewhere by Einaudi as an anti-reductionist aspiration, or better, as the need for man and society to retain a line of communication open to a ‘qualitative’ level of discourse that would integrate the purely ‘quantitative’ level. In Einaudi’s words, which we will dwell on again later: a progression from the rationality of interests to shared values (so that, in the “divine city”, “the word ‘tax’ shall be unknown”, since “all people know the underlying reason and the value of the sacrifice offered on the altar of common good”); from “compromise” as a utilitarian exchange (*do ut des* or “pure self-seeking and biased calculation”) to compromise seen as “loyal allegiance” (or “overcoming opposites and merging them into a higher unity”); from the rationality of procedures (the majority criterion of the “*major pars*”) to the identity-based recognition of the “*sanior pars*”; from the mere legality of the law (which “is always formally

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the Einaudian conception of freedom with A. Giordano (in a review of his book *Il pensiero politico di Luigi Einaudi*, Genova, Name, 2006): P. SILVESTRI, “On Einaudi’s liberal heritage”, *History of Economic Ideas*, XVI, nn. 1-2 (2008), pp. 245-252; A. GIORDANO, “A Short Reply”, *ibid.*, pp. 253-255.

<sup>4</sup> L. EINAUDI, “Il nuovo liberalismo” (1945), in *Riflessioni cit.*, p. 119.

<sup>5</sup> *Id.*, “In lode del profitto” (1956), in *Prediche inutili* (Torino, G. Einaudi, 1956-1959), p. 192.

coercive”) to its full legitimacy (by virtue of which “the people say: this is the law – and abide it”); finally, almost as if to slow down the race to reduce economic activity to the rational-calculating aspect, Einaudi stressed the anthropological dynamics of *desire*. For if on the one hand “the fundamental economic principle was and will forever be the limitedness of means suitable to achieve the numerous and ever-changing and constantly proliferating goals men set themselves”, on the other he placed emphasis not so much on rational calculation of the means but on the overwhelming force of desire, which continually rewrites the limits of the human:

Even though technical and scientific advances daily push back [...] the obstacle of the limitedness of means which thwarts satisfaction of human desires [...], man’s desires race faster than does science [...] In fact, if man’s gaze were not directed towards the *new*, and *upwards*, then how would humans be distinguished from animal species?<sup>6</sup>

I will thus try to propose a possible re-interpretation of some key passages of the Einaudian discourse which appear to represent crisis or turning points and yet, at the very same time, act as signals of a process of growth and maturation of his thought that ceased only with his death. These were passages that were constantly being written and rewritten, through that interweaving of life and thought, experience and reflection which was constitutive of Einaudi the man. Unceasingly spurred by the great changes and the dramatic, often tragic, events of his era, he was compelled to reformulate over and over again the statement of his guiding principles, the laws of his thought. These passages from the life and thought of Einaudi are therefore important inasmuch as they highlight a theme that proves recurrent, yet is never identical to itself: the Law-Freedom relation. In accordance with the logic of variations on a theme, I will develop this relationship through five emblematic figures.

#### 1. IN PARTICULAR: “RULES OF THE GAME” AND “STRUGGLE”

As I have tried to show elsewhere, Einaudi’s liberalism cannot be adequately understood other than by tracing it back to his prolonged and uncompleted search for good government.<sup>7</sup> Despite the innumerable interpretations

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<sup>6</sup> Id., *Scienza economica ed economisti nel momento presente* (Torino, Tip. Artigianelli, 1950), p. 23; English transl.: “Economic science and economists at the present days”, *International Social Science Bulletin*, II, 2 (1950), pp. 160-171.

<sup>7</sup> Here I take up again and develop several themes and conclusions I put forward in the book *II*



Western political thought has given of good government – a veritable mythic symbol that has constantly risen again to new birth during the history of over two millennia,<sup>8</sup> – in its broader sense it has maintained the general meaning of the *ideal model of society* or also called the *good society* or *good polity*.<sup>9</sup> This was not, however, a model that Einaudi regarded as an ideal representation of the perfect society: rather, a perfectible model (as we will see more clearly in the conclusions – section 5 – but it is helpful to underscore this aspect from the very start in order to avert any misunderstandings concerning the supposed impossibility of reconciling liberalism and good government).<sup>10</sup> Turning his attention again to this mythic symbolization, and refreshing it in the light of his own day, Einaudi began to refer to good government, often in an allusive manner, above all when his intellectual efforts concentrated on the attempt to reconstruct the liberal institutions destroyed first by the war and then by fascism.

The ideal model of the liberal society that formed the object of Einaudi's quest consists of two essential moments, which represent the two moments of the “struggle”, or, as it were, the two foci of good government: competition and debate, or more generally, the market and the public sphere,<sup>11</sup> which he

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*liberalismo di Luigi Einaudi o del buongoverno* (Soveria Mannelli, Rubettino, 2008). On Einaudi, Bobbio wrote: “no-one uses the words good government and bad government any longer, and anyone who does still use them seems to be looking to the past, a distant past, which only a composer of useless preachings has the courage to bring up again any more”. Now, while noting that the antithesis “good government and bad government” is “one of the great themes, if not the greatest of all themes in political reflection of all times, Bobbio reductively construed Einaudian good government as government by good rulers (specifically, he referred to the figure of Cavour as an Einaudian *exemplum* of a good ruler). For a construal of Einaudian good government in terms of a theory of greatest collective welfare: F. FORTE, *Luigi Einaudi: il mercato e il buongoverno* (Torino, G. Einaudi, 1982). Röpke alluded to the “vast programme of ‘good government’ to which Einaudi devoted his whole life”, with a reference to the problem of the relation between political-legal institutions and the market: W. RÖPKE, “La lezione di Luigi Einaudi”, in A. DALLE MOLLE (ed.), *Il maestro dell'economia di domani* (s.l., Edizioni di via aperta, 1961), p. 30 (my italics).

<sup>8</sup> Cf., among others, N. BOBBIO, “Il buongoverno”, *Accademia Nazionale dei Lincei*, vol. VIII, 5 (1983), pp. 235-244; Q. SKINNER, *Visions of Politics*, vol. II, *Renaissance Virtues* (Cambridge, Cambridge University Press, 2002). In this important works there is a lack of reference to the reception-translation, by Italian humanism, of the theme of good government in *oikonomia* treatises, and today this still leads to misinterpretations (see *infra*, notes and text).

<sup>9</sup> For a reappraisal of this issue see the essays in A. HAMLIM – P. PETTIT (eds.), *The Good Polity. Normative Analysis of the State* (Oxford, Blackwell, 1989).

<sup>10</sup> A misunderstanding often due to interpretation of “good government” in terms of Greek political philosophy or of republicanism; cf. for ex. A. PASSERIN D'ENTRÈVES, *La dottrina dello Stato. Elementi di analisi e di interpretazione*, second edition (Torino, Giappichelli, 1967), p. 321; Engl. Transl. *The Notion of the State. An Introduction to Political Theory* (Oxford, Clarendon press, 1969). For a re-reading of the theme of good government in a liberal-democratic perspective see C. DONOLO, *Il sogno del buon governo. Apologia del regime democratico* (Milano, Anabasi, 2002).

<sup>11</sup> Bruno Leoni already perceived in Einaudian thought the existence of a “parallelism of the

perceived as embodying the principle of material and intellectual progress. If competition is conceived as a mechanism for selection of the deserving and for ushering in the better and the new, by the same token debate acts as a principle that operates with a view to establishing truth. What they share is the necessary condition of struggle, that is to say, variety and diversity (of actions and opinions): in a nutshell, pluralism. Aware that World War I, the red two-year period and, later, fascism that had become a regime, had to a large extent undermined the foundations of the old liberal order, eroding it slowly at first, but then at an ever increasing pace, Einaudi initially sought to mount a staunch defense of the old system.<sup>12</sup> In the article *Verso la città divina* [*Towards the Divine City*] (1920), written in that context of social unrest from which fascism drew its lifeblood, Einaudi wrote a critical reply, underpinned by his liberal convictions, to an article by Giuseppe Renzi. The latter had spoken of a “genuine hymn to the force that unifies, that kills doubt and marks the way” and had urged intervention by an authoritarian power capable of re-establishing order. After recognizing that “his hymn responds to a need of the human spirit that is loath to engage in conflict, or in the struggles of men, parties, ideas, and desires instead to seek peace, harmony and concord, the unity of spirits, even if obtained by means of the sword and blood”, Einaudi responded with a spirited counter-proposal, outlining the presuppositions of the “divine city”, i.e. his ideal conception of the rule of law, built up around the polarity between the *fecundity of struggle* and a necessary *framework of rules*.

If I could, I would like to write as impetuous and captivating a hymn as his, a hymn to discord, struggle, disunity of spirits [...] What on earth reason is there for the state to have its own ideal of life, and then be compelled to force men to conform with it, *à la Napoleon*? Why only one religion rather than many different kinds? Why only one political, social or spiritual point of view and not an infinity of opinions? Beauty, perfection, cannot be equated with uniformity, nor with unity: the essence resides in variety and contrast.<sup>13</sup>

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economic order and the political order”, suggesting that it includes “another pair of reciprocally corresponding concepts: the market on the one hand, debate on the other”, B. LEONI, *Luigi Einaudi e la scienza del governo* (Torino, G. Einaudi, 1964), p. 21.

<sup>12</sup> For an analysis of this dramatic phase of Einaudi’s speculation see M.L. SALVADORI, “Einaudi e la sua concezione del conflitto sociale”, *Annali della Fondazione Luigi Einaudi*, XXXVII (2003), pp. 7-31.

<sup>13</sup> L. EINAUDI, “Verso la città divina” (1920), in *Il buongoverno. Saggi di economia e politica* (1897-1954), E. ROSSI (ed.) (Bari, Laterza, 1954), pp. 32-33. Note the similarity between the passages taken from Einaudi mentioned in the text and the Popperian praise of the tower of Babel: K.R. POPPER,

But variety and contrast are to be found only within that which Einaudi, in this very first allusion to the “divine city”, terms the “limit state” (see section 3.2).

The vision of the fecundity of struggle can be traced back to the anthropological core of Einaudi's liberalism (his “generative ideas”), as set forth most explicitly in *La bellezza della lotta* [*The Beauty of Struggle*] (1923). Against any imposition from on high, or even worse, against any surreptitiously paternalistic attempt, whether brought about at the hand of whichever petty politician happens to wield power at the time, or espoused by socialism or the rising growing corporative doctrine, Einaudi re-affirms the value of the “efforts of those who desire to elevate themselves on their own and in this struggle, fight, falter and rise again, learning at their own expense how to win and to better themselves”.<sup>14</sup> It is by no means superfluous to point out that at the origin of the Einaudian conception of struggle and freedom there lay anti-perfectist Christian anthropology: man as a flawed and fallible being, not perfect, yet perfectible.<sup>15</sup> Although Einaudi refers only occasionally to this background,<sup>16</sup> it remains as the underlying setting of many of his statements on the fallibility of knowledge and human action. It is a setting Einaudi would draw on more than once when re-reading the works of some English thinkers who, while not necessarily Christian, were considered by Einaudi to be among the “founders” and/or advocates of the exercise of *criticism* in the public sphere: Milton, Junius,<sup>17</sup> Mill, Dicey, Bryce.

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*Congetture e confutazioni* (1969), G. PANCALDI (ed.), it. transl. (Bologna, Il Mulino, 1972), p. 598; also by K.R. POPPER, *Alla ricerca di un mondo migliore. Conferenze e saggi di trent'anni di attività*, it. transl., B. DI NOI (ed.) (Roma, Armando, 1989), p. 213. For a recent re-reading of these themes: E. DI NUOSCIO – P. HERITIER, “Le culture a Babele: scacco od opportunità?”, in E. DI NUOSCIO – P. HERITIER (eds.), *Le culture di Babele. Saggi di antropologia filosofico-giuridica* (Milano, Medusa, 2008), pp. 7-15.

<sup>14</sup> L. EINAUDI, “The Beauty of the Struggle” (1923), in ID., *Selected Economic Essays*, L. EINAUDI, R. FAUCCI and R. MARCHIONATTI (eds.) (NY, Palgrave Macmillan, 2006), pp. 66-72, 66.

<sup>15</sup> On the possible configurations of the relation between Christianity and liberalism, cf. the essays contained in P. HERITIER (ed.), *Problemi di libertà nella società complessa e nel cristianesimo* cit., especially P. NEMO, *Quattro tesi sul tema dei rapporti tra liberalismo e cristianesimo*, *ibid.*, pp. 129-161; most recently, D. ANTISERI – G. GIORELLO, *Libertà. Un manifesto per credenti e non credenti*, Afterword by S. Tagliagambe (Milano, Bompiani, 2008).

<sup>16</sup> See L. EINAUDI, “Perché la guerra continua” (1920), in *Cronache economiche e politiche di un trentennio (1893-1925)*, 8 volumes (Torino, G. Einaudi, 1961-1966) [henceforth *Cronache*], vol. V, 1963, pp. 967-977, where Einaudi contrasts two conceptions of man and, consequently, of society, namely the perfectist vision of “reasoning reason” which seeks to “create the state and society by starting out from the premise of naturally good mankind perverted by political institutions”, versus the “Roman, Christian, British view of the real man, a mixture of virtues and vices, reason and passion, of historical man as he has evolved over the millennia, as he is molded by the land, the institutions of the past, of previous generations”.

<sup>17</sup> It is worth recalling that Einaudi himself worked under the pseudonym of Junius, especially

After levelling harsh charges against *The silence of the industrialists*<sup>18</sup> following the assassination of Matteotti, Einaudi reluctantly had to recognize that the exercise of criticism had been relinquished in the wake of this event that was to signal the turning-point towards dictatorship. Yet at least at the beginning, Einaudi was of the opinion that only a tiny minority had effectively forsaken their critical voice; he remained confident that in the overwhelming majority of cases, the power of criticism would prevail.

One year before his forcible resignation from the “Corriere della Sera”, followed by the expulsion of its Director, his friend Albertini, Einaudi again staunchly defended the liberal position, issuing one of his last warnings to the Italians in the *Preface* (1925) to Mill’s *On Liberty*. Mill’s work, he wrote, was being brought out in its Italian version “at a moment when it is vitally urgent that the right of criticism and of non conformism, and all the issues involved in the struggle against uniformity, should come to the fore and be given pride of place. Precisely because fascism had begun to shackle the press and the country was bit by bit being “driven towards intolerance”, Einaudi believed it was necessary to reiterate loud and clear the “immortal principles” proclaimed by Mill: “truth can become a principle of action only when all people are allowed the broadest possible freedom to contradict it and confute it [...] Truth, once it has become a dogma, no longer exerts its effectiveness in improving men’s character and behavior”.<sup>19</sup> Further expanding on the teachings of Mill, Einaudi realized, as he wrote years later in a preface to the writings of Albertini, that fascism was supported by mass consensus; therefore the real and “undying problem” of freedom is that of “defending the freedom of the minority against the tyranny of the majority”.<sup>20</sup>

After the old liberal order had been definitively swept away, and Einaudi had retired from public life to devote himself to study, he focused his intellectual efforts on the attempt to re-found the liberal order by molding it on a framework of widely shared (liberal) values that would be catalyzed by the ideal of good government. In effect, it had been the very circumstance of the broad-ranging popular support achieved by fascism that had led him

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in his most polemical articles, some of which he then gathered together in *Lettere politiche di Junius* (Bari, Laterza, 1920), thereby evoking the celebrated *Letters of Junius*, considered as the “trailblazer of the modern press”: J. HABERMAS, *Storia e critica dell’opinione pubblica* (1962), it. transl. (Bari, Laterza, 1971), pp. 78-79.

<sup>18</sup> L. EINAUDI, “Il silenzio degli industriali” (1924), *Cronache cit.*, vol. VII, 1965, pp. 767-768.

<sup>19</sup> ID., *Prefazione* to J.S. MILL, *La libertà* (Torino, Piero Gobetti editore, 1925), p. 4.

<sup>20</sup> L. EINAUDI, *Prefazione* to L. ALBERTINI, *In difesa della libertà. Discorsi e scritti* (Milano - Roma, Rizzoli, 1947), p. xv.

to realize (as will be seen further on, in section 2 concerning his exchange of ideas with his pupils) that the struggles of the red two-year period were not merely fomented by struggles among different interests, but were struggles for the recognition of axiological goals the liberal regime had failed to grasp. In his attempt to gain insight into the causes of the disintegration of the social fabric, the route Einaudi would follow was that of re-reading the past in order to re-found the future liberal institutions. Thus as he reflected on one of the crucial points that engaged his thoughts, and calling to mind the *ethos* and *modus agendi* of those who made up the middle class, Einaudi dwelt on what in his view had constituted a favorable circumstance:

The classes genuinely representative of Italy, composed of small and medium-sized industrialists, landowners, tenant farmers, merchants and craftsmen, all of them very hard-working, as well as [...] honest upright professional figures and civil servants devoted to the public good, still supplied the state with a fair number of men who went into politics and held government office. Righteous and hard-working, they deemed that the most consummate art of statesmanship lay in ensuring 'good government' of public affairs, where 'good government' was to be understood as that wise and *prudent* manner of administrating which they adopted in private affairs.<sup>21</sup>

The scope and significance of this passage can best be understood by associating it with another work by Einaudi, a profoundly autobiographical work, in which Einaudi re-evokes the *ethos* and *narrates* the events and undertakings of his family, especially his mother and his uncle (he was extremely attached to his uncle, whom he had "worshipped like a second father"): "this manner of living that I used to observe in the family *home* represented the universal habits of the Piedmontese bourgeoisie for the greater part of the 19<sup>th</sup> century". These habits shaped "a ruling class that left a profound imprint of honesty, capabilities, parsimony, devotion to duty in the political and administrative life of the Piedmont which subsequently created Italy itself". At that time, Einaudi continued,

man, the family, were not conceived in isolation from their rootedness in the land, the home, the local area, and these are *sentiments* that also engender devotion to the country and the spirit of sacrifice which, alone, are capable of nurturing the young shoots that will burgeon into sound states.<sup>22</sup>

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<sup>21</sup> L. EINAUDI, *La condotta economica e gli effetti sociali della guerra italiana* (Bari, Laterza, 1933), p. 400.

<sup>22</sup> ID., "Avvertenza del compilatore" (1922), in *Pagine doglianesi, 1893-1943* (Comune di Dogliani - Biblioteca civica Luigi Einaudi, Dogliani, 1988), pp. 32-34. On the relevance of this essay see M. EINAUDI, *Presentazione, ibid.*, pp. 11-12.

Reading between the lines of these two citations, a synthesis of some of the most recurrent problems of political, juridical and economic philosophy can be perceived: the problem of order, legitimacy and obligation; the question of the ruling class and of those holding power in government, and the question of the relation between private and public, and between society in general and the government as well as that between the market and the state; and, last but not least, the problem of individual, family, affective and social relations, the question of values, traditions and the civic virtues on which every social order is built (in dwelling on these issues Einaudi mentions specific aspects such as prudence, parsimony, a hard-working approach, honesty, a professional attitude, loyalty, trust, spirit of sacrifice). The veritable conundrum of these issues was to become the crux of Einaudian research on liberal good government.<sup>23</sup>

Now, as far as our analysis is concerned, it is significant that these problems are evoked through a latent analogy between government of one's own home and civil government. Although the Einaudian approach to good government did incorporate the classical categories associated with these themes – the *rule of law*, *government by good ruling class*, *government or mixed constitution*<sup>24</sup> – it takes on a heightened significance precisely by virtue of this analogy, which was typical of humanism (*microcosm-macrocosm*) and was particularly recurrent throughout the Italian treatise tradition dealing with *oikonomia*, above all in the 16<sup>th</sup> and 17<sup>th</sup> centuries. It was a tradition imbued with the profound conviction that the economic approach constituted “a valid tool for regulating both family and civil affairs: hence the frequent association, found in almost all the treatises, between home and city, government of the home and political government, father and prince”.<sup>25</sup>

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<sup>23</sup> In many respects this conundrum can be likened to the so-called Böchenforde paradox: “the secularized state lives on presuppositions it is unable to guarantee” (E.W. BÖCHENFORDE, “La formazione dello stato come processo di secolarizzazione” (1967), in P. PRODI – L. SARTORI (eds.), *Cristianesimo e potere* (Bologna, EDB, 1986), p. 121); on which, most recently, J. HABERMAS, “I fondamenti morali prepolitici dello stato liberale”, in J. RATZINGER – J. HABERMAS, *Etica, religione e Stato liberale* (2004) (Brescia, Morcelliana, 2005), pp. 21-40.

<sup>24</sup> Since the crucial role assigned to the middle class in terms of social equilibrium, Einaudi refers to “Good government” as “mixed constitution” in the same sense used by Adam Smith in the third book of *The Wealth of Nation*, in A. SMITH, *Glasgow Edition of the Works and Correspondence of Adam Smith* (Oxford, Clarendon Press, 1976), pp. 405 and 412, which has properly been recognised as the “*locus classicus* of the theme of commerce and liberty” (D. FORBES, “Sceptical Whiggism, Commerce and Liberty”, in *Essay on Adam Smith, Glasgow Edition* cit., p. 193). See also D. WINCH, *Adam Smith's Politics. An Essay in Historiographic Revision* (Cambridge, Cambridge University press, 1978), p. 70.

<sup>25</sup> D. FRIGO, *Il padre di famiglia. Governo della casa e governo civile nella tradizione dell' "economica" tra Cinque e Seicento* (Roma, Bulzoni, 1985), p. 68.

The *vision* of the ancient regime and the systems of thought that underpinned it, as portrayed and made visible by the treatises on *oikonomia*, thus ranges over a far broader horizon than the purely domestic context, and encompasses deep-set mental structures. It conjures up a *type of political and social framework that is not defined in opposition to the private sphere, but rather by starting out from this very sphere*: it therefore become possible to theorize “good government” of the city, or of the “republic”, only insofar as “good government” of the home has already been delineated and implemented. From this point of view *oikonomia* forms part “of a general project of ‘constitution’ [also in the sense of ‘institution’]”<sup>26</sup> of the old regime; it is a backdrop that *reflects* and allows the further *visualization* of certain ‘unwritten’ rules that are the *supporting structures of the entire organization* of the early modern age.<sup>27</sup>

However, these observations should not lead to the mistaken belief that Einaudi’s aim was to restore the order of bygone times. For as has been noted, in his capacity as an authoritative “minister of public opinion” Einaudi had provided “his own running commentary on the great process of transformation” experienced by Italy, thereby building “at the same time a *model of the ideal society*, less distant from Italian society than might be thought”.<sup>28</sup> But I would argue that the crucial point does not reside in investigating the degree of realism of this model. Rather, what is important is to focus on the model itself and to enquire into the meaning of (and arising from) the gap between the model and reality. In other words, if good government is the answer Einaudi provides, in that particular historical context, for an Italy that was enduring the agonizing torment of war and fascism, then by the same token Good government is the response to the deep-seated need, felt by every community, to share a *representation-vision* of justice and the good that endows men in society with a shared sense of common action (suffice it to mention that Einaudi included in the collection *Il buongoverno* [*Good government*] several details from the well known fresco by Lorenzetti, which the rules of Siena demanded should be *visible* on the walls of the “Palazzo Pubblico”). Thus the passages pertaining to the analogy between government of the home and government of *res publica* cited above serve as a preview to a more general interpretation of the Einaudian quest for a liberal form of good government, a quest prompted by the need to gain insight into the dynamics of those

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<sup>26</sup> Here the Author refers to the concept of “Consitution” as used by O. BRUNNER, “La ‘Casa come complesso’ e l’antica ‘economica’ europea”, in *Id.*, *Per una nuova costituzione economica e sociale* (1968), it. transl. (Milano, Vita e pensiero, 1970), pp. 133-164.

<sup>27</sup> *Ibid.*, p. 200 (my italics).

<sup>28</sup> R. FAUCCI, *Einaudi* (Torino, UTET, 1986), p. 417.

“deep-seated mental structures”, those “‘unwritten’ rules which act as the supporting structures of the entire organization” of society. Einaudian good government is therefore a “project of ‘constitution’”, eternally *under construction* and never fully “instituted”, studded with metaphors, narrations and images acting as the backcloth through which the “invisible” and founding rules of the social order “are reflected and visualized”.

## 2. CONCRETELY: THE “FATHER-MASTER” AND THE “SON-PUPIL”. REFORMS OR REVOLUTION?

If the relation between father and son has, since earliest times, always been one of the most concrete figures of the law-freedom nexus, that between master and pupil is no less evocative of the ties linking the two aspects. It is no coincidence that the paired terms appearing in the title – “father-master” and “son-pupil” – draws on an expression used by Busino to depict the “mysterious” relation between Einaudi and Ernesto Rossi (see *infra*). But it is also possible to extend this figure of the intermeshing of law and freedom to the relations Einaudi entertained with another two celebrated pupils, Carlo Rosselli and Piero Gobetti, although it should be borne in mind that on account of their early and tragic death, the relationship was interrupted too early for Einaudi to have been able to develop with these two pupils the special (but no less problematic) relationship he had with Rossi. For the present purposes it is interesting to note that the themes developed in the master’s discussions with his pupils reveal the presence of an additional problem, which made itself felt rather strongly and significantly. This was the relation between tradition and criticism, which can in many respects be assimilated to the figure of the law-freedom interaction.

Once again, and re-stated in slightly different terms, there emerged the issue that was at the forefront of debate in various forms from the end of the nineteenth century and throughout the greater part of the twentieth century, focusing on the burning question: reform or revolution?<sup>29</sup> All three of the above-mentioned pupils were, albeit to varying extents and in varying ways, mesmerized by socialist doctrine. And they were attracted – this was especially true of Rosselli and Gobetti – by the clarion call of the Russian re-

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<sup>29</sup> The question is very similar to that discussed by Marcuse and Popper (where Einaudi’s position can be assimilated to the Popperian thesis, despite the different epistemological and philosophical foundations). H. MARCUSE – K.R. POPPER, *Reform or Revolution? A Confrontation* (1971), Engl. transl. (Chicago, New University Press, 1976).



volution, the echoes of which were not slow to reach Italy, further amplified by the struggles of the red two-year period. During the course of these events, Einaudi reached a conviction he would thereafter hold unshakably, which he expressed icastically in the following terms: “revolutionaries are like children: they want to take the production machine to bits to see what it’s like inside, in the illusion they can then put the pieces together again better, without the present-day friction, which they attribute to capitalism”. The Einaudian critique is based on an institutional and evolutionary vision of the market. The market, Einaudi wrote, is a “highly delicate and extremely complicated” mechanism, which only “the slow action of the centuries and the cooperation of millions of patient, far-sighted, inspired and hard-working men” can truly create.<sup>30</sup> In other words, as the Piedmontese liberal never tired of repeating, while the market was not the best of all possible worlds (and for this very reason it could always be reformed) it had nevertheless assured the multiplication of previously unheard-of opportunities and prospects, which no other economic system known so far had ever succeeded in achieving. “Breaking down this highly delicate and extremely complex mechanism”, Einaudi argued, amounted to a leap into the unknown and was likely to cause more harm than it was intended to remedy.

The criticisms Rosselli advanced against his master shortly after the publication of *La bellezza della lotta*, i.e. in the immediate wake of the red two-year period, are emblematic in this respect. For Rosselli “the drama of official Italian liberalism” was that of having undergone a transformation from a progressive-oriented to a “conservative” approach. It “remained a theoretical construct, as if suspended in a void of concepts” and it was “embroiled in the *contradiction between method and system*”, the “method” being represented by the theory and the preaching of struggle, antagonism and discord (*in primis* between workers and entrepreneurs), while the “system” was the capitalist-bourgeois system, accepted as a necessary premise, indisputable and insurmountable.<sup>31</sup>

Rosselli’s argument has been seen as voicing a critical view of

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<sup>30</sup> L. EINAUDI, “Rivoluzionari ed organizzatori” (1920), in *Cronache* cit., vol. V, 1963, pp. 750-751.

<sup>31</sup> C. ROSSELLI, “Luigi Einaudi e il movimento operaio” (1924), in *Socialismo liberale e altri scritti*, J. ROSSELLI (ed.) (Torino, G. Einaudi, 1973), pp. 44-51. On the distinction between “method” and “system”, C. ROSSELLI, “Liberalismo socialista” (1923), in *Scritti politici*, P. BAGNOLI – Z. CIUFFOLETTI (eds.) (Napoli, Guida, 1988), pp. 57-58. In formulating this distinction, Rosselli seems to have drawn inspiration from his cousin and friend Alessandro Levi, a historian of the Risorgimento and philosopher of law: A. LEVI, “Liberalismo come stato d’animo”, in *La rivoluzione liberale* (5 June 1923), p. 72.

one of the weak points of a conception of liberalism as a mere complex of unchangeable rules of the game, devoid of any internal developmental principle, and above all lacking any realization that the victor may change the rules definitively in his own favour. Rosselli contended that Einaudi failed to realize, or did not wish to perceive, in what direction the “struggle” – on the beauty of which Einaudi had waxed eloquent – was moving, namely the victory of one side or the other, in a manner that might perhaps not be reversible.<sup>32</sup>

But in this regard it should be noted that while Einaudi, as an economist, did have a tendency, especially in this early phase of his thought, to hypostatize the bourgeois liberal state, considering it as a framework of laws suited to disciplining struggle within civil society, it is equally true that the framework was by no means conceived as unchangeable: its developmental principle rested on the crucial issue of critical debate within public opinion. The real problem, however, resided in the fact that this legal framework presupposed a shared axiological horizon which would allow struggle, taken as competition and debate, to come about in the form of peaceful struggle. Now, what the struggles of the red two-year period had severely undermined was precisely the complex of values on which the liberal state of the bourgeois era had been built up. Thus if Rosselli had not fully understood the principle of gradualist reformism of his master, Einaudi, on the other hand, reflecting critically on the red two-year period and the emergence of fascism in its wake, began to construe good government as a problem of shared values.

In an article in memory of Gobetti (1926), the master seems to chart once more the distance that had separated him from the latter (and perhaps also from Rosselli), almost as if seeking to span the gap. For despite acknowledging Einaudi as his master,<sup>33</sup> Gobetti had drawn closer to the thought of Gramsci and the group of communists of Ordine Nuovo, above all in his last years. In Einaudi’s eyes, this signalled that the time had come to reflect on the problem of how to hold together tradition and criticism, conservation and innovation.

On the one hand, the liberal in him maintained that it was still of value to recognize “the utility of religiously observed traditions, of the ancient *institutions* which impose themselves on peoples almost as if they were endowed with a *supernatural virtue*; hence the very serious social danger arising if revolutionary events shake up *that sense of taboo which holds the basic social struc-*

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<sup>32</sup> R. FAUCCI, *Einaudi* cit., p. 222.

<sup>33</sup> See P. GOBETTI, “Il liberalismo di Luigi Einaudi” (1922), in *Scritti politici*, P. SPRIANO (ed.) (Torino, G. Einaudi, 1960), pp. 322-336.

*ture firm*". Re-reading Le Play, who investigated the reasons underlying prosperous and stable societies, Einaudi explains by means of a metaphor that institutions are founded on a sort of "magic spell": "all the social world's a stage curtain; and behind it there's nothing". Yet it is precisely this stage act that enables societies to hold together, which implies that the critical and revolutionary spirit can push things up to a certain limit, beyond which, however, "the paper castle [which] stood firm of its own accord under the shelter of the spell", collapses.<sup>34</sup>

On the other hand, even if his pupil was not convinced by these comments on Le Play, he could nevertheless clearly see, Einaudi went on,

that the cult of traditions, the continuity of the home environment, the respect for saving that enables people to build their home or set up their business, or till their land, are powerful ideas and that such ideas must be set *on a par with critical and creative thought*, with the revolutionizing machine of the economy and with the profound aspiration of the working masses to move upwards, disrupting the existing social equilibrium.

Such ideas, Einaudi felt, "have just as much right of citizenship in that *ideal city he was shaping in his mind*, a city that is fine to behold because it is not rigidly motionless but is continually in transformation under the contrasting pressures of the many forces that act upon it".<sup>35</sup> With a classic projective judgment, Einaudi was thereby making a first attempt to focus on the "ideal city" as the core problem of good government, which is such only if it succeeds in deriving its solidity from a dynamic equilibrium of latent and contrasting forces.

With regard to the relationship between Einaudi and Rossi, which developed above all in epistolary form through their correspondence when Rossi was in internal exile on the island of Ventotene, it was dialectically the most critical and fertile of his experiences of interaction with his pupils. The issue on which debate centered most intensely was that of the limit of reformism: that is to say, how far can reforms be driven without overstepping the limit and escalating into revolution? The very same problem of the limit, interestingly, comes to the fore in the essence of the master-pupil interaction as well: up to what point should the master instruct, that is to say, educate, his pupil? In this educational process, should the master not set the conditions for his

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<sup>34</sup> L. EINAUDI, "Piero Gobetti nelle memorie e nelle impressioni dei suoi maestri", *Il Baretto* (16 March 1926), p. 80 (my italics).

<sup>35</sup> *Ibid.*, p. 80 (my italics).

own ‘disappearance’, so that the pupil can begin to walk on his own legs? And, conversely, how far can the pupil express a critical stance towards the master without undermining that very educational process which, as such, constitutes the basis of their interaction?

Precisely in this regard, and pondering on the profound difference in character and temperament between Einaudi and Rossi – the former calm, prudent, tempering and apparently cold, the latter full of warmth, spontaneous, sharp and to the point, trenchant to the limit of flippancy –, Giovanni Busino raised the question of whether here one might not be “facing the mystery of the father-master and the son-pupil”.<sup>36</sup> In this meeting and clash of positions concerning the limits to be placed on reformism, the debate between Einaudi and Rossi was destined to intensify in a *crescendo* of polemics, almost to the point of breaking up the relationship.<sup>37</sup> Einaudi’s pupil was perfectly aware of the distance that separated him from his master, so much so as to declare himself “an exceedingly Jacobinical Jacobin”. On the other hand, Rossi did up to a certain point share Einaudi’s gradualist reformism, albeit arguing that this could be successful only in “normal times” and not in the midst of a “crisis” period, when “the old rules of the game become an obstacle” and other rules have to be set up. The latter statement is of extreme importance, and while Rossi subsequently let it drop and did not elaborate on the matter further, Einaudi himself would later take up the question again at the dawn of the Constituent Assembly, when discussion focused on the problem of “legally unsolvable dilemmas” and on the possibility of overriding even the constitutional order (see section 3.2). During their exchange of correspondence, the debate reached a point where the master confessed his regret at his pupil’s infatuation with

methods of law-making imposed by compulsion, rapidly, with the force of a revolution that has set itself a program and is determined to implement it, crushing any form of opposition. It truly pains me that this mentality has been endorsed by yourself as well. I have no faith in this type of law-making, and it is my belief that the poi-

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<sup>36</sup> G. BUSINO, “Un’amicizia esemplare”, in L. EINAUDI – E. ROSSI, *Carteggio (1925-1961)*, G. BUSINO and S. MARTINOTTI DORIGO (eds.) (Torino, Fondazione Luigi Einaudi, 1988), p. 4.

<sup>37</sup> In the following citations I refer above all to the exchange of correspondence between Einaudi and Rossi in the period between the beginning of 1941 up to the beginning of 1943, in L. EINAUDI – E. ROSSI, *Carteggio* cit., pp. 65-121; and “Aggiunte e complementi al carteggio L. Einaudi, E. Rossi”, G. BUSINO – P. GIORDANA (eds.), *Annali della Fondazione Luigi Einaudi*, XXXVII (2003), pp. 293-446: 399-401. I dwell more extensively on this debate in *Il liberalismo di Luigi Einaudi o del buongoverno* cit., pp. 244-252. Cf. also R. FAUCCI, “Einaudi, Croce, Rossi: il liberalismo fra scienza economica e filosofia”, *Quaderni di storia dell’economia politica*, VII, n. 1 (1989), pp. 113-133.

son the French revolution left in 19<sup>th</sup>-century society, which has spilled over into the present century, derives to a large extent from this cause.

In the attempt to clarify this position, and accusing his pupil of an excess of "geometric" spirit conducted in the name of a reason that bordered on "pure logic", Einaudi put forward the following thesis: "a society is *sound* and *lively* and *vibrant* only if it has within itself many *incomprehensible* things. If the men of a society begin to reason about everything, one can be quite certain that such a society is close to beaking down".<sup>38</sup> This argument could hardly fail to infuriate his pupil, who, feeling he could almost no longer recognize or agree with (what was in his view) his master's "illuministic" teaching, objected:

What is this lack of faith in the Goddess Reason? Where do you think we should stop, sir, when developing an argument? Who should decide which points are not to be questioned? As far as I am concerned I am going to continue beating my knuckles against all the institutions that happen to stand before me in order to try to establish whether they are made of marble or wood or plaster, and I am going to continue asking, just as my old friend Bentham did: "What is the use?", without ever allowing myself to be imposed upon by tradition.

By the time the debate reached this point, a misunderstanding had occurred. The pupil interpreted his master's argument as a sort of invitation to genuflect before tradition (whatever it may be), tradition having been assumed as dogmatic. On the other hand, when the pupil himself effectively professed his unconditional faith ("trust") in the "*Goddess Reason*", and also in the criterion for meting out a judgment on "institutions" shaped in the utilitarian-Benthamian mould ("What is the use?"), he unwittingly testified to his belonging to two traditions, illuminism and utilitarianism, no less dogmatically assumed.<sup>39</sup>

However, it is perfectly legitimate to conjecture that Einaudi was trying to reformulate the problem of the "*invisible*" foundations<sup>40</sup> (as he would later

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<sup>38</sup> As noted by Faucci (*Einaudi, Croce, Rossi cit.*), Einaudi's position against the supporters of authoritarian intervention, and the related argument that there exist many "incomprehensible things", has a certain resemblance to that of Hayek: "even if such power is not in itself bad, its exercise is likely to impede the functioning of those spontaneous ordering forces by which, without understanding them, man is in fact so largely assisted in the pursuit of his aims" (F.A. HAYEK, "The Pretence of Knowledge" (1974), in *New Studies in Philosophy, Politics, Economics and the History of Ideas* (London, Routledge and Kegan Paul, 1978), pp. 42-43).

<sup>39</sup> I refer here to the concept of "dogma" as formulated by P. LEGENDRE, *Della società come testo cit.*

<sup>40</sup> On "invisible organizations and invisible concrete foundation", understood as "that which

designate them), or of the “spell” that holds up the fabric of society. This was a problem he had already touched on in the reflection on Gobetti, and the reformulation he proposed in the present circumstance was even more allusive. Einaudi would offer no further precise thematization until he later explicitly raised the problem of legitimacy (see section 3.2). The misunderstanding was further aggravated by the failure, on both sides, to clarify what was meant by the term “reason”. The term is invoked several times but with different and sometimes overlaid meanings: “critical reason”, “pure logic” (or constructivist reason), “means-end rationality”.

In any case, the divergences between master and pupil could hardly be described as clear-cut. The tensions were mediated by their common search for the ideal “good government” around which a cohesive society could develop and withstand disruptive pressures, and with which both men could establish a bond of allegiance that would accommodate their respective distinctions.<sup>41</sup> It is in fact no coincidence that it was the “son-pupil”, no less faithful than he was critical (faithful precisely because the “father-master” allowed scope for *criticism*, which was in fact scope for *freedom*),<sup>42</sup> who saw to the editing and publication of Einaudi’s selected essays entitled *Il buongoverno* [*Good government*]. By the same token, it was once again the pupil who wrote the counterpart: *Il malgoverno* [*Bad Government*].<sup>43</sup>

### 3. IN GENERAL: AUCTORITAS, LEX, VERITAS

In order to gain insight into the specificity of Einaudi’s liberal good government, it is helpful, as a first step, to outline some commonplace concep-

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precedes the established law”, see P. HERITIER, *Uscire dal secondo millennio? Problemi metodologici nel discorso sulla libertà* cit., pp. 93-100.

<sup>41</sup> According to Giovanni Busino, they shared a common “world view”: “It is the belief that freedom is an ethical fact, it is an individual and social practice in everyday life and in history. In order for it to prevail, it is indispensable for there to be struggle, diversity, discord, debate. Life is freedom and freedom is variety and contrast. Being free means being able to move within a dense network of interrelations among men and among groups, within the fabric of natural and social constraints and of rules, values and signs that fix limits and indicate forced directions. Moving amid so many obstacles, in order to live and act as a free man, requires exact, concrete knowledge of such obstacles, and it calls for the formulation of suitable means to face them. Acting, knowing, being free are inseparable. Without freedom, civilization cannot live” (G. BUSINO, *Un’amicizia esemplare* cit., pp. 6-7).

<sup>42</sup> Rossi confessed this aspect in a letter written to his wife on 25<sup>th</sup> August 1940, where he also stressed Einaudi’s great epistemological humility, cf. E. ROSSI, *Miserie e splendori del confino di polizia. Lettere da Ventotene 1939-1943*, M. MAGINI (ed.) (Milano, Feltrinelli, 1981), pp. 69-72 (my italics).

<sup>43</sup> E. ROSSI, *Il malgoverno* (Bari, Laterza, 1954).

tions on the function of the public sphere in the so-called bourgeois state. We may, firstly, analyse the following quotation where, in reference to the principle “*Veritas non auctoritas facit legem*”,<sup>44</sup> it is stated that nineteenth-century liberalism held the view that

since it is impossible to suppress public *power* [...], such power must at least be *impersonal*, the expression not of a will but of a universal reason which does not derive from an *authority* but from the *truth*. This truth is ‘*the law*’. Thus the problem will not be that of knowing who is the ‘good ruler’ or which is the ‘good government’, but rather of establishing which *procedures* lead towards reason and truth [...]. Accordingly, for nineteenth-century liberalism, the activity of the state is reduced to the essential, to production of the law through *discussion* and ‘*balancing*’ within the legislative power. But were liberalism to be viewed purely as a theory of the limits of political power, to be summarized in the formula ‘how much, how far, to govern’, it would fail to be a complete doctrine of the state, given that such a doctrine cannot neglect to address the more ancient question: ‘how to govern’.<sup>45</sup>

This type of reconstruction of modernity and liberalism presupposes a series of categories and dichotomies which have likewise become commonplaces. Einaudi’s liberal good government, on the other hand, appears to refute these commonplaces. We will list them here, with the proviso that they will be examined in detail further on: a) the reduction of good government and, more generally, the problem of legitimacy, to a purely procedural criterion; b) the – typically modern – reduction of *auctoritas* to *potestas*; c) the solution of the problem of power through the mechanism of *checks and balances*; d) the superiority of the “Rule of law” over “rule by men”, a dichotomy which, from the historiographic point of view, neglects the funda-

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<sup>44</sup> As is well known, the triad *Veritas-Auctoritas-Lex* evokes a series of problems that have been pervasive throughout the history of western theological, political and juridical thought. For a revisitation of the Hobbesian arguments: U. SCARPELLI, “*Auctoritas non veritas facit legem*”, *Rivista di filosofia*, LXXV (1984), pp. 27-43; for a focus on the philosophical juridical approach: F. VIOLA, *Autorità e ordine del diritto* (Torino, Giappichelli, 1984); for a complete political-philosophical and juridical reconstruction cf. G. PRETEROSI, *Autorità* (Bologna, Il Mulino, 2002). From the point of view of my reconstruction, it is important to re-read Einaudian liberalism in order to become aware that in Einaudi’s thought *Auctoritas*, *Veritas* and *Lex* appear with the always subtle and elusive characteristics of the limit: with its manner of being potentially, and at one and the same time, that which “clips” but also that which “blows below” the wings of freedom. I have tried to show that this same problem is also found, in a structural analogy between legitimation of power and the legitimation of *savoirs*, with regard to juridical or economic “Science”: P. SILVESTRI, “*Veritas, Auctoritas, Lex. Scienza economica e sfera pubblica: sulla normatività del Terzo*”, *Il pensiero economico italiano*, 17, n. 2 (2009).

<sup>45</sup> P. PASQUINO, “Prefazione” to C. SCHMITT, *Parlamentarismo e democrazia* (1923), it. transl. (Cosenza, Marco editore, 1999), p. XIV (my italics). Cf. also J. HABERMAS, *Storia e critica dell’opinione pubblica* cit., p. 103.

mental re-elaboration-transformation of good government between the sixteenth and seventeenth centuries, as mediated by the treatises on *oikonomia* (we will not dwell further on this particular point, see *supra*).

### 3.1. “Élite” as “authority”

It is important first and foremost to note that Einaudian research on the good *elite* focuses on figures of authority that do not derive their legitimacy only from their ‘prudent’ mode of action and their knowledge of economic science as a ‘science of good government’. Rather, they are legitimated to the extent to which their action is undertaken in a context of values, preferably shared values.<sup>46</sup>

As Einaudi developed these themes, his ideas became more distant from Mosca and Pareto’s political theories, and he began to criticize both their configuration of the elite and their manner of theorizing power legitimation strategies. Briefly, their theory maintains that power is always held by an élite that obtains legitimacy and consensus by appealing to the *authority* of “common opinion”, “myth”, “dogmas”, “political formulas” (Mosca), “derivations” (Pareto), which exploit the *irrational* (passional, emotive or affective) sphere of the governed or the masses. Einaudi’s growing distance from the sociological conceptions of the ruling class that dominated politics was prompted by his reflection on *the theory of the élite in Frédéric Le Play* (1936).<sup>47</sup> As we will see in greater detail further on, a number of reasons can be put forward to illustrate when and why Einaudi assigned a meaning to the concepts of “taboo”, “myth”, “dogmas” or “formulas” that was not necessarily negative, but could instead be described as neutral. Here we will merely note Einaudi’s significant emphasis on the concepts of “natural authority” and “social authority” (the latter in the sense of socially recognized) utilized by the French reformist writer. ‘Authority’ is conceived here as *pre-political* and *pre-judicial*, or better, as emerging, so to speak, “from the bottom up”, from the substrate of social relations.<sup>48</sup> This authority

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<sup>46</sup> See also M.L. SALVADORI, “Einaudi e la teoria della classe politica”, in *Luigi Einaudi nella cultura, nella società e nella politica del Novecento*, R. MARCHIONATTI – P. SODDU (eds.) (Firenze, Leo Olschki, 2010), pp. 269-283.

<sup>47</sup> L. EINAUDI, “Il peccato originale e la teoria della classe eletta in Federico Le Play” (1936), in *ID., Saggi bibliografici e storici intorno alle dottrine economiche* (Roma, Edizioni di storia e letteratura, 1953), pp. 307-344.

<sup>48</sup> It is worth recalling that Einaudi was a great supporter of local *self-government* precisely because it offered a model of a “spontaneous” community that rises “from the bottom up”: L. EINAUDI, “Via il prefetto!” (1944), in *Il buon governo* cit., p. 59.



is vested in 'those who have, through their virtue, become the *models* of private life, who demonstrate a strong trend towards the good [...] and who, with the example of their family and their working life and business, with their scrupulous dedication to the decalogue and customary practices of social peace, gain the affection and respect of all those who surround them, and thus ensure that prosperity and peace reign throughout the local area.<sup>49</sup>

Now, since there are major differences between Einaudi and Pareto, it is helpful to compare these two figures in order to highlight the specificity of Einaudian liberalism.<sup>50</sup> With regard to a comparative assessment of their activity as editorialists and essayists, it has been pointed out that unlike the well-known scepticism that characterized Pareto, Einaudi's *Cronache* "reveal the constant conviction that the message will not fall on deaf ears" and that "*homo politicus*, if appropriately enlightened, pursues objectives that are not in contrast with those of *homo oeconomicus*".<sup>51</sup> It is worth keeping in mind that the Einaudian *homo oeconomicus* is an "idealtyp" embodied in the *ethos* of the middle class (struggle and sacrifice to improve one's own conditions, the ethic of hard work, skill, honesty, frugality and prudence) and whose conduct is thus ethical-economic. Accordingly, the above-mentioned conception can be summarized in the claim that in Einaudi's vision the illuministic-liberal ideal of rationalizing politics in the name of morals signified embracing the aspiration that politics, or rather, the policy maker, should be tuned to the individual and social moral code of the middle class, thereby contributing to harmony between civil society and the government. It is precisely the public sphere that is called upon to enact this mediation.

In the Einaudian perspective, the circle of an ideal model of public space is completed into the nexus between the three spheres of the press, the parliament and the ruling class. Public opinion (the press and parliament), acting through struggle and critical debate involving ideas, values and visions of the world, not only fulfils the function of becoming a principle of selection of the "truth" – for the purposes of institution of the "law" and recognition of its

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<sup>49</sup> ID., "Il peccato originale e la teoria della classe eletta in Federico Le Play" cit., p. 316.

<sup>50</sup> I addressed the relation between Einaudi and Mosca in "Il buongoverno nel pensiero di Einaudi e Mosca: tra governo della legge e governo degli uomini", *Annali della Fondazione Luigi Einaudi*, XL (2006), pp. 157-196; as regards Einaudi and Pareto, I take up again and further develop some considerations in F. FORTE – P. SILVESTRI, "Pareto's Sociological Maximum of Utility of the Community and the Theory of the Elites", in *The Big Book in Fiscal Sociology*, J.G. BACKHAUS (ed.) (Heidelberg - New York, forthcoming: 2012).

<sup>51</sup> R. FAUCCI, *La scienza economica in Italia. Da Francesco Ferrara a Luigi Einaudi (1850-1943)* (Napoli, Guida, 1982), pp. 28-29.

legitimacy – but it also becomes a mechanism for choosing and controlling (and, if necessary, overthrowing) the ruling class, and thus for recognizing its (legitimate) “authority”. According to this model, the best ruling class is expected to emerge through the electoral competition for votes, under the eyes of an illuminated and critical public opinion. It should be noted, though, that confidence in the possibility of this type of mediation accomplished by the public sphere depends to a large extent on the presupposition that good rulers – who are operating in pursuit of good government, that is to say, an ideal and shared model of society – would be expected to emerge from the middle class, the embodiment of the above described virtues. This middle class, conceived as the fulcrum of the public sphere, would play an equally ideal role of mediety-mediation in the social equilibrium.

In contrast, for Pareto, “good government”, reductively assumed to be merely the problem of good rulers, is simply impossible.<sup>52</sup> The reasons underlying this impossibility can, in my view, be traced back to the lack of any positive function of the public sphere in Paretian thought. Rather, the public sphere, as conceived by Pareto, was seen only as the place where ideologies and values dictated by sentiment and an emotive response, which are in their very essence irrational, clash without any possibility of mediation. It should also be pointed out that this manner of thinking conceals a confusion and inability to distinguish between “incommensurability” and “incomparability”: for even if one believes that subjective values are incommensurable, this need not mean that they are by their very nature incomparable.<sup>53</sup> In contrast, the Einaudian conception of the public sphere starts out from the idea that comparison and exchange of ideas and values can open up a route to mediation. Furthermore, as an advocate of *the beauty of struggle*, Einaudi sees the comparison-contrast of ideas as desirable, so that the quest for truth, for improvement and the new can always be left *open*.

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<sup>52</sup> V. PARETO, “Il crepuscolo della libertà” (1904), in *Oeuvres complètes*, t. XVIII, *Écrits politiques*, II, *Reazione, libertà, fascismo* (Genève, Droz, 1989), pp. 399-413: 411.

<sup>53</sup> Here I use the distinction made by G. MARRAMAO, *La passione del presente. Breve lessico della modernità-mondo* (Torino, Bollati Boringhieri, 2008), p. 42, where the author argues that is it necessary to (re)consider – and thus seek to go beyond the perspectives of Rawls and Habermas – the role of rhetoric in the public sphere, provided that it is a case of “rhetoric with proof”: “only by adopting this kind of criterion will it be possible to elude the paralyzing dilemma between the *absolutism of truth* and *point-of-view relativism*, taken as mirror-image and opposite forms of justified self-reference. Not everything that presents itself as incommensurable – i.e. quite literally, that cannot be reduced to a homogeneous criterion of measurement (for example, the values or beliefs of different cultural contexts) – must thereby necessarily be regarded as incomparable”.

I would therefore argue that one of the problems of Pareto's political-sociological theories lies in his conception of struggle, in particular struggle for power, as well as his conception of "social heterogeneousness" (today, it would be referred to as value polytheism). The Paretian conception of "social heterogeneousness" is extreme to the point that he is unable to conceive of any form of mediation between rulers and the ruled: the struggle for power is a struggle with no holds barred, history is but an "élite graveyard" and "freedom is a luxury".<sup>54</sup>

But one might have felt moved to address the following question to Pareto: if everything is just power, then what is the point of voicing your opinion? Why on earth devote yourself to the exercise of *criticism*? *What is it that spurs you to engage in critical debate?* Or alternatively, as suggested in Einaudi's objections, if history is none other than a cyclical succession of "the oppressed and the oppressors, subordinate classes and dominating classes", if rulers obtain obedience, legitimacy and consensus only through tools that are effectively "pseudo-logical [i.e. "myth", "formulas", "derivations"] helpful for giving a false stamp of approval to the brute fact" of power,<sup>55</sup> then everything is power. And yet, equally, if everything is power, then nothing is such any longer. Any regulatory criterion is lost, as is any "ideal *schema*", to quote the term Einaudi adopted as a means of distinguishing good rulers from the bad ones and good "myth" and/or "formulas" of legitimation from the bad versions. But for Einaudi, unlike Pareto, evil is not a necessary and ineluctable datum that is reiterated throughout history according to the logic of eternal recurrence: history is not cyclical, and the future is open. If Pareto held good government to be impossible, for Einaudi good government is another world that is (still and always) possible.<sup>56</sup>

In short, the great difference between Pareto and Einaudi lies in the fact that the latter attributed enormous importance to the public sphere, both in terms of its function as a critical constraint on power, and also as the "third

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<sup>54</sup> As shown in Busino's very effective synthesis, in Pareto's political-sociological thought "one reality alone is ever-lasting: namely, there is a stratification in political and social life, that of the ruling and the ruled. It is essentially oligarchic. Politicians promise radical change but as soon as they have come to power they defend a society which has nothing to do with whatever they promised. Then, social life is hell, cruelty is unending and the social agents are victims of illusion and myths. Men have only one small light at their disposal, a single weapon with which to fight: science" (G. BUSINO, "The signification of Vilfredo Pareto's sociology", *Revue européenne des sciences sociales*, 38, n. 117 (2000), pp. 217-228: 226).

<sup>55</sup> L. EINAUDI, *Miti e paradossi della giustizia tributaria* (1940, second edition revised and extended) (Torino, G. Einaudi, 1959), p. 290.

<sup>56</sup> Symptomatic in this regard are the conclusions of the essay on Le Play: L. EINAUDI, *Il peccato originale e la teoria della classe eletta in Federico Le Play* cit., p. 328 (my italics).

place” of mediation between the ruled and the rulers, and, additionally, as a place where it is possible to cooperate by starting out from (or with a view to) shared values.

Einaudi had reached these same conclusions in his attempt to distinguish the “optimum tax” from the “taille tax” (that is to say, a tax that is perceived as an imposed levy). The “optimality” of the tax could not be based exclusively on a cost-and-benefit criterion, and it inevitably raised the problem of power, leading to the need to discriminate between rulers who rule with a view to promoting the common good and those who rule for their own gain, or otherwise stated, to distinguish the “finance of the *Periclean city*” from the “finance of the *tyrannical government*”.<sup>57</sup> In this sense, the conclusions put forward in *Miti e paradossi della giustizia tributaria* are emblematic:

If it's a question of coercing people into paying taxes, then any old despot is perfectly able to do that. But the leader chosen by the *valentior pars* of the citizens [...] intends to elevate the mortals of the earthly city to the divine city, where the word “tax” is unknown, because *all the people know the reason and the value of the sacrifice offered on the altar of the common good*.<sup>58</sup>

### 3.2. “Rule of law”, constitutional order, legitimacy

In Einaudi’s thought one finds no hierarchical opposition between the “rule of law” and “rule by men”. This was not simply because he was firmly convinced that in order to make good laws it is essential to have good (and prudent) rulers, or because, as is often said, laws exist only insofar as they are made by men (although in this case a distinction should be drawn between governing *per leges* and governing *sub lege*):<sup>59</sup> rather, it was also because even the supreme constitutional Law cannot, according to Einaudi, be absolutized or hypostatized, and it must remain open to the possibility of change. Moreover, the “rule of law” and “rule by men”, inasmuch as these involve ‘ruling’ or ‘governing’ or ‘commanding’, need to be recognized in order to be obeyed. But let us proceed step by step.

The expression “rule of law” [*impero della legge*]<sup>60</sup> is used by the Piedmontese liberal statesman in three different ways, in different contexts.

<sup>57</sup> L. EINAUDI, *Miti e paradossi della giustizia tributaria* cit., pp. 263 and ff.

<sup>58</sup> *Ibid.*, p. 297.

<sup>59</sup> N. BOBBIO, “Governo degli uomini o governo delle leggi?”, in *Id.*, *Il futuro della democrazia* (Torino, G. Einaudi, 1991), pp. 175-179.

<sup>60</sup> Einaudi’s phrase in Italian “Impero della legge” is, very probably, his translation of the “rule of law”. We hold the expression “impero della legge” significant because of its analogy, though

Firstly, and in the generic formulation adopted in *Verso la città divina*, Einaudi dwells on “the *limited* state which guarantees men the rule of law”, understood here “as a *condition* for anarchy of the spirits”, that is to say, as a condition for the pluralism of ideas, actions and visions of the world.<sup>61</sup> Many years later, musing on his earlier thoughts and turning over in his mind the objection he had raised against Croce’s liberalism concerning the virtual indifference of the latter towards the economical, legal and institutional aspect of liberalism,<sup>62</sup> Einaudi utilized the phrase “rule of law”, describing it as a “*necessary* condition”, albeit not a sufficient condition, for a free society. In his view, the observance of these conditions “embodies, to a large extent, the content of concrete liberalism, liberalism as political action. Clearly, this is not all there is in liberalism”, because “the life of a man living in society cannot be infused from outside, but rather must come from an inner creative force. This notwithstanding, *forms* themselves have a virtue of their own; only *within* the forms can man satisfy the need for freedom, and undertake the effort to achieve material and moral elevation”. But we are dealing here with “formal conditions or guarantees that are necessary so that men living in

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never explicated by Einaudi, with the “impero della verità” [“rule of truth”, see section 3.3]. On the historical relationship between rule of law and constitution cf. C.H. MC ILWAIN, *Constitutionalism: ancient and modern* (Ithaca, N.Y., Cornell University press, 1947); M. DOGLIANI, *Introduzione al diritto costituzionale* (Bologna, Il Mulino, 1994). From a liberal point of view: cf. B. LEONI, *Freedom and the law* (Princeton, N.J., D. Van Nostrand, 1961); F.A. VON HAYEK, *The Constitution of Liberty* (London, Routledge & Kegan Paul, 1960); ID., *Law, Legislation, and Liberty*, 3 volumes (London, Routledge & Kegan Paul, 1973-1976-1979), and, more recently, V.J. VANBERG, “Liberal constitutionalism, constitutional liberalism and democracy”, *Constitutional Political Economy*, 4/03/2010 (on line). For a re-reading of Leoni’s thought, also with particular reference to the criticisms raised against von Hayek as the advocate of the continental “rule of law”: C. LOTTIERI, *Le ragioni del diritto. Libertà individuale e ordine giuridico nel pensiero di Bruno Leoni* (Soveria Mannelli - Treviglio, Rubbettino - Faccio, 2006), pp. 13-50. For a different reading of Hayekian philosophy of law: P. HERITIER, *Ordine spontaneo ed evoluzione nel pensiero di Hayek* (Napoli, Jovene, 1997), especially pp. 243-294. From different perspectives: J. RAZ, “The Rule of Law and Its Virtue”, in ID., *The Authority of Law* (Oxford, Clarendon, 1979); ID., “The Politics of the Rule of Law”, *Ratio Juris*, 3, n. 3 (1990), pp. 331-339; *contra*: F. VIOLA, “Il Rule of Law e il concetto di diritto”, *Ragion pratica* (30 June 2008), pp. 151-168; E. COLOMBATTO, “It Was the Rule of Law, Will It Be the Rule of Judges?”, *Revue économique*, 58, n. 6 (November 2007), pp. 1163-1180.

<sup>61</sup> L. EINAUDI, *Verso la città divina* cit., pp. 32-36.

<sup>62</sup> L. EINAUDI – B. CROCE, *Liberismo e liberalismo*, P. SOLARI (ed.) (Milano - Napoli, Ricciardi, 1957). On this debate cf., among others, B. LEONI, “Conversazioni su Einaudi e Croce”, *Biblioteca della libertà*, XXII, n. 98 (July-September 1987), pp. 55-81; R. FAUCCI, *Einaudi* cit., pp. 294-302; F. FORTE, “I liberalissimi di Einaudi e di Croce” (1989 and 1994), in ID., *L’economia liberale di Luigi Einaudi. Saggi* (Firenze, Leo Olschki, 2009), pp. 193-221; P. SILVESTRI, *Il liberalismo di Luigi Einaudi o del buongoverno* cit., chap. IV, pp. 191-232; I have tried to unravel the knotty points and the misunderstandings of this debate in a critical-constructive approach in “Rileggendo Einaudi e Croce: spunti per un liberalismo fondato su un’antropologia della libertà”, *Annali della Fondazione Luigi Einaudi*, XLI (2007), pp. 201-240.

society can be assured of a life lived in freedom”.<sup>63</sup> Finally, during his exchange of ideas with Croce, Einaudi had introduced the concept of the rule of law as a criterion to distinguish between liberalism-liberism (which for him were strictly linked) on the one hand and socialism and communism on the other, in the attempt to dispel the common misconception that identifies liberism with non-interventionism. Since it had now become quite clear to him that the difference between “liberist” and “interventionist” did not reside in the *quantity* (for example, private property vs. public property) but rather in the type of intervention by the state in the market, the problem now became that of distinguishing among the different types of intervention.

In Einaudi’s view, whereas the “interventionist law-maker” proceeds through command-rules or directives, i.e. by telling individuals what “they must do and not do”, the liberal-liberist law-maker says to the people: “I will certainly not tell you what you must do, but I will fix the *limits* within which you will be able to move freely, at your own risk”.<sup>64</sup> The distinction would thus seem to lie between “command-rules” and “framework-rules”, or between “specific command” and “general and abstract law”, “arbitrary power” and “law”, “administrative” and “juridical” action.<sup>65</sup>

While it may be true, as Bobbio pointed out, that there is a hint of an analogy with the Hayekian distinction between rules of organization and rules of conduct,<sup>66</sup> it is nevertheless undeniable that Einaudi did not enquire into the full philosophical-legal implications of these distinctions. In other words, in Einaudi there is no clarification either of the meaning of the law-maker’s act in “fixing the limits” or of the nature of this “limit”, even though Einaudi mentions it repeatedly, associating it with the notion of “condition” of possibility. In actual fact, the distinction between “command” and “framework” is labile because even the framework itself imposes some “constraints”.<sup>67</sup> Moreover, as already noted by Leoni, however general and abstract these constraints may be, they do not avert the eventuality that even the liberist law-maker may end up telling men “what they must do”. For instance, following the examples adduced by Einaudi, “the liberist law-maker” who sets the limits on free action, says:

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<sup>63</sup> L. EINAUDI, *Memorandum*, G. BERTA (ed.) (Venezia, Marsilio, 1994), pp. 45-46 (my italics).

<sup>64</sup> ID., “Liberismo e comunismo” (1941), in *Il buongoverno cit.*, pp. 273-274.

<sup>65</sup> ID., *Memorandum cit.*, p. 30.

<sup>66</sup> N. BOBBIO, “Il pensiero politico di Luigi Einaudi” (1974), in L. EINAUDI, *Memorandum cit.*, p. 94.

<sup>67</sup> Cf. also ID., “Discorso elementare sulle somiglianze e sulle dissomiglianze fra liberalismo e socialismo” (1957), in *Prediche inutili cit.*, p. 220.

If you are an industrialist, you will be able to freely choose your workers, but you will not be allowed to keep them at work for more than such and such a number of hours a day or night, and the number will vary depending on whether they are adolescents, men or women; you will have to insure them against accidents in the workplace, disability, old age, or illness. You will have to make comfort rooms available for breast-feeding women, and washing areas equipped with showers and water for the workmen to get washed; you will have to abide by health and safety regulations in the working areas<sup>68</sup>

and so forth. Surveying these examples, Leoni objected that it is

hard to understand why the liberist intervention should *limit* itself, say, to showers for the workmen and not go so far as to include, one might suggest, play-school for the workers' children; or why it should go so far as to include the showers instead of limiting itself to water or cleaning the various areas. In short, one is quite spontaneously prompted to ask: where does the intervention called liberist begin, or indeed, where does it end? And why should it be regarded as being of a different type compared to the intervention known as socialist?<sup>69</sup>

However, on closer inspection, it could be said that Einaudi's line of reasoning presupposes that the "duties" imposed by the liberist lawmaker will be obeyed inasmuch as certain minimum prerequisites of dignity and hygiene in the workplace have received prior recognition and have been commonly accepted. In this context, it is no coincidence that during the period of time in question, while drafting an extensive review of Röpke's *Die Gesellschaftskrisis der Gegenwart*, Einaudi had begun to address the question of the limits and condition of possibility of competitive struggle. Granting that the degenerations of capitalism were not to be attributed to "the economics of competition" but to "*failure to observe the rules of the game of competition*", he felt it was nevertheless imperative to recognize the "*crucial importance of an ethical-legal-institutional setting suited to the principles of the economy itself*", where the pride of place awarded to "ethical" would seem to suggest that the "*legal-institutional*" aspect itself presupposes values.<sup>70</sup>

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<sup>68</sup> ID., *Liberismo e comunismo* cit., p. 274 (my italics).

<sup>69</sup> B. LEONI, *Conversazioni su Einaudi e Croce* cit., p. 65 (my italics).

<sup>70</sup> L. EINAUDI, "Economia di concorrenza e capitalismo storico. La terza via fra i secoli XVIII e XIX", *Rivista di storia economica* (June 1942), pp. 49-72. Note that Röpke had not only grasped "the vast programme of 'good government' to which Einaudi devoted the whole of his life" (see *supra*), but he also reciprocated Einaudi's admiration, to the point of considering him as one of the "leaders of modern liberalism" (W. RÖPKE, *Scritti liberali*, A. FRUMENTO (ed.), ital. transl. (Firenze, Sansoni, 1974), p. 114). On Einaudi and Röpke, allow me again to refer the reader to P. SILVESTRI, *Il liberalismo di Luigi Einaudi o del buongoverno* cit., pp. 238-244; cf. most recently F. FORTE, "Einaudi e Röp-

Once again, Einaudi's argument should be more carefully considered by setting it in the context of the aim he was seeking to achieve, namely that of confuting the false identification between liberism and non interventionism. His conclusion in this regard is instructive. The line of demarcation sought by Einaudi did not so much concern the "framework/command" dichotomy, since both the framework and the command, inasmuch as they are limits, must be freely recognized in order to be obeyed. The decisive question thus becomes the "critical point", a theme introduced by Einaudi in this context and then developed later (see section 4). Moreover, open and active participation in the public sphere, critical debate and its publicity (rather than the framework-law *per se*) plays an essential role in rendering any legislative measure "universal" and not "arbitrary", and therefore legitimate. In other words, the dread of command laws stems not from the argument that they have a coercive "essence", but from their potentially paternalistic impact, although it has to be admitted that not even the general and abstract laws are exempt from such an eventuality. Paternalism is always an inbuilt feature of what Einaudi called the "short route" to security, happiness and well-being. By contrast, the "long route" is necessarily "laborious and uncertain", and "it cannot be otherwise; because men have to engage in experiments at their own risk [...]; because men do not improve when someone takes it upon himself to decide, on their behalf and in their name, what they must and must not do: rather, men must acquire their education by themselves and make themselves morally capable of taking decisions under their own responsibility".<sup>71</sup> Therefore, what is really at stake in the 'doctrine' of the "critical point", in the sense described here, is the twofold concept of freedom-responsibility. "If I had to give a definition", Einaudi concluded,

I would say that any measure for greater social justice or statization that goes beyond the critical point is communistic, and any measure that wisely succeeds in remaining somewhat below it is liberal. This clearly shows that the crux of the dispute [on liberism-liberalism *vs.* socialism-communism] does not reside in the measure itself but in the means which ensure it stays within the critical point limits or else make it overstep these limits.<sup>72</sup>

Einaudi also focused attention on an identical problem of limits and their recognition with regard to the founding values of the constitutional order. He

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ke. Interventi conformi ed economia sociale di mercato" (2001), in *L'economia liberale di L. Einaudi* cit., pp. 223-238.

<sup>71</sup> L. EINAUDI, *Liberismo e comunismo* cit., p. 275.

<sup>72</sup> *Ibid.*, pp. 277-278.



expounded his ideas in the substantial essay «*Major et sanior pars*» ossia della tolleranza e dell'adesione politica (January 1945),<sup>73</sup> written as he looked towards the phase of the Constituent Assembly in Italy, of which he himself was one of the most eminent protagonists. This essay was also one of the ways in which, as an 'old liberal', he sought to come to terms with the nascent democratic order: if "the constitution of the modern states is founded on the principle of the *major pars*, of the majority", nevertheless this principle, he argued, could not and was not to be considered its ultimate foundation. For our purposes here, it is sufficient to highlight just a few of the problems addressed by Einaudi.

First, it was important to avoid reducing legitimacy to the procedural criterion of the *major pars*, and likewise to avoid reducing legitimacy to legality. This was vital, Einaudi wrote, not only to limit the "abuse of power by the majority over the minority, or because democracy can always degenerate into "demagogy", but also because a state of "tyranny" and corruption can perfectly easily take shape under the umbrella of "legality". Therefore the most appropriate regulatory criterion to pursue is one where

if we use the term 'democratic' to designate a society whose government is intent on achieving the greatest possible moral and material good of the men who today and tomorrow are the components of the national community, then we can say that the more the 'majority' – which is necessarily entrusted with choosing the select governing group – succeeds in *identifying* the elected with the *sanior pars* of the political ruling class,

in other words with the "*meliores*", the "*wise*", the "*prudent*", the greater will be the likelihood of fulfilling the aim of establishing a democratic society. With regard to the regulatory criterion of the tendency towards identification between the ruled and the rulers, in the liberal approach this was to be brought about through the fundamental *mediating* function of the public sphere. In contrast, the mechanism of *checks and balances*, important though it was in containing the abuse of power or arbitrary power of the majority, appeared to Einaudi as a second best, so much so that "checks" can fulfill their function only "if the men [of the majority] are willing to be "tolerant", that is to say only in the extent to which society lives in a climate of concord supported by *inalienable* values, which are usually and historically recognized as such in the wake of bloody battles, injustice and unspeakable suffering.

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<sup>73</sup> All the citations below are taken from L. EINAUDI, "Major et sanior pars ossia della tolleranza e dell'adesione politica" (1945), in *Il buongoverno* cit., pp. 92-112.

Now, Einaudi went on, over time these values crystallize into *dogmas* and *taboos* internalized by common consciousness, and it is these dogmas and taboos that operate as “invisible” limits on power.

An old English brocard – Einaudi explained – states that the House of Commons can do anything save transform a man into a woman and viceversa. Like all brocards, it is silent on the point that there are many things law-makers could do, but do not do because a *mysterious invisible hand* closes their mouth and prevents them from uttering words different from those the centuries have engraved in men’s consciences.

Continuing in this same line of reasoning, and in a passage of Burkean ascendancy,<sup>74</sup> Einaudi writes that:

The checks are an extension of the will of dead men, who say to the men that are alive today: you shall not operate as you please [...]; you shall, under pain of violating solemn oaths and constitutional charters, observe certain rules that we held to be essential for conservation of the state we founded. If you wish to change these rules, you must first engage in prolonged reflection, you must obtain the consensus of the greater part of your fellow-men, you will have to tolerate the circumstance that some groups among them, the minority of them, will obstinately refuse to consent to the change desired by the overwhelming proportion of citizens.

On the other hand, it should be borne in mind that the “legal checks written into the constitution are rigid” and since “in moments of great political tension, when men become intolerant” and there is an “*urgent demand*” for “*reforms*”, “the lack of a safety valve can lead to a violent change of regime”. Given these circumstances, Einaudi maintains, it is only through the prudence and the “sense of historical responsibility” of the ruling elite that a way out of this type of “*legally insoluble dilemma*” can be found.

In short, it can be observed that the Einaudian approach calls for a two-fold legitimation criterion: *political*, i.e. concerning the question of how those who are ruled over can proceed to identify the good elite, and *juridical*, which is to a large extent dependent on the criterion that regulates critical discussion concerning both ordinary and constitutional laws. “An enduring, fertile law has as its essential characteristic the support of the minority for the resolution passed by the majority”. But in order for this “support” to be authentic and consciously expressed, and not merely the fruit of a compromise of *do ut des*, it must necessarily undergo the stage of “criticism”, “debate”, “contrasting

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<sup>74</sup> An ascendancy noted by B. LEONI, *Luigi Einaudi e la scienza del governo* cit., p. 83.

ideas”, as it proceeds on the route that leads to the formation of laws. Only through criticism and contrast can the law, which is “always formally coercive”, “become the common fruit of the majority and the minority”; “only then do the people say: this is the law. And only then do they obey it”.

However, in Einaudi’s vision there is one more “final” level of legitimacy, namely the *foundational* and *invisible* level (to use Einaudi’s own words). This coincides with the myth and dogmas that act as the supporting structure for the entire institutional and social order: these are by definition, albeit temporarily, shielded from criticism. In the one and only essay where Einaudi focuses directly and explicitly on the problem of legitimacy, he maintains that stable “political society” are “built on the rock-solid base of juridically indefinable *myth*, and of some *words* whose meaning is probably impossible to define, yet these myth and words embody the will of the past and the consensus of the living”. These myth are often condensed into a “formula that goes virtually unnoticed [...] against which nobody raises any objection”. Inasmuch as they are a force of social cohesion, these *formulas* and/or *rituals* are “states of mind” that constitute “the basis of legitimacy”. This is how institutions come to be accepted by the “future generations”.<sup>75</sup>

Resuming the basic theme being developed in this article, we can thus assert that these “myth” are figures of *auctoritas* (in Latin *augere* = to found, promote, endow with authenticity) from which springs power, and which form the supporting structure of society. It is an *auctoritas* which precisely for this reason cannot be reduced to a procedural, legalistic or technical-engineering configuration of power, such as the modern version of legal-rational power. From this perspective, it is worth noticing that many current social sciences adopt, in my view, a reductive conception of laws and institutions as mere “rules of the game” meant as a set of constraints or opportunities, or the *means* for the pursuit of given aims. Such approaches neglect the problem of the internalisation of institutions and of their *normative* authority, thus overlooking the anthropologically more authentic meaning of “*instituting*” in the strict sense of *instituere* [establishing (*statuere*) inside (*in-*)], but also of founding and educating. Institutions are far more than mere “rules of the game”: they are mirrors of (individual and collective) *identity* and they are endowed with a normative structure that is much more profoundly rooted in feeling than in instrumental rationality. Institutions are mediators between “inner life” and “public life”, as connecting structures and a medium of *communication*.

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<sup>75</sup> L. EINAUDI, “Della paura” (1946), in *Riflessioni di un liberale sulla democrazia. 1943-1947* cit., pp. 223-226 (my italics).

### 3.3. “Rule of truth”

If the elected ruling class imagined by Einaudi was certainly not conceived as the repository of truth concerning the common good,<sup>76</sup> much less was it in a position to impose such a good on the governed. In a final attempt to reformulate the status of the public sphere, and, in particular, the fundamental role of the press as a critical voice, Einaudi wrote: “truth is no person’s privilege and arises only from open contrast among opposing opinions. Defense of the common good is the privilege of no social group”; therefore, since “the notion of the common good, of the general interest” cannot be defined [...] we must resign ourselves to listening with due respect to all the multifarious views and obtaining the greatest possible harmony from that confused babble of voices”.<sup>77</sup> Another significant aspect is that even the

power of the majorities encounters a *limit* in the *truth* of the resolution they have adopted. [...] In a free society, the process of debate does not end with the majority vote. [...] A law truly enters into the holy of holies and is inscribed in the bronze tables of the law when [after prolonged debate] criticism falls silent. [...] Therefore the most supreme legislative power in every free country, does not reside in parliament. The latter is only one of the manifestations, the *legal* face, of power.

In this essay, what is significant is not only the fact of assuming “truth” as the “limit” on power, but also the fact that Einaudi assigns to *critical conscience* – in its specific manifestation as the press, which acts as the “mouth-piece” of this conscience – the duty to speak *in the name* of a *veritas* which here seems to assume a transcendental dimension. The newspaper, Einaudi concludes, should become the “mouth of truths”, of “eternal” truths, so that it can give voice to “the conscience of man, who aspires to reach up to God”.<sup>78</sup> Admittedly, this line of reasoning is more allusive than persuasive, but it does testify to Einaudi’s persistent need to leave open that ‘third place’ in which the ‘rule of truth’ is decreed and *freely recognized*, and from which legitimacy should issue. In the words he wrote as late 1957, “truth lives only because it can be denied. Since we are free to deny it at any moment, we assert the rule of truth [*“impero della verità”*] every time”.<sup>79</sup>

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<sup>76</sup> In this regard: ID., “Gian Giacomo Rousseau, le teorie della volontà generale e del partito guida e il compito degli universitari” (1956), in *Prediche inutili* cit., *passim*.

<sup>77</sup> ID., “Tipi di giornali” (1946), in *Riflessioni di un liberale sulla democrazia. 1943-1947* cit., p. 246.

<sup>78</sup> *Ibid.*, pp. 259-260.

<sup>79</sup> L. EINAUDI, *Gian Giacomo Rousseau, le teorie della volontà generale e del partito guida e il*

## 4. IN A NUTSHELL: THE DOCTRINE OF THE "CRITICAL POINT"

To clarify the elusive meaning of the "critical point", never formalized by Einaudi himself, but constantly reformulated with examples and metaphors, one can paraphrase his 'definition' of liberalism: the critical point is a doctrine of limits. It expresses the need for a median point, a genuine golden mean, as well as a 'mediating figure', in other words a figure capable of mediating the oppositions and the different tension lines that emerge in the 'moments of crisis' Einaudi had found himself facing during his prolonged reflection: security versus struggle, conservation versus innovation, tradition versus criticism, social equilibrium versus dynamism, state intervention versus individual freedom. In its essence, the doctrine of the critical point lies at the core of that "sound, vibrant and vital society" Einaudi had alluded to in his debate with Rossi, which he had subsequently addressed in greater detail in the essay-review on Röpke. In this sense, the "critical point" is a figure that synthesizes the law-freedom nexus.<sup>80</sup> Its most effective formulation is perhaps found in the *Lezioni di politica sociale* [*Lectures on Social Policy*] (written during his Swiss exile in 1943-44), when, with the rising concept of the welfare state, Einaudi felt it was essential to consider the problem of the 'demarcation line' between the state and civil society. "The critical point marks the transition from live men to automata".<sup>81</sup> It is the point beyond which the intervention of the state is transformed from physiological to pathological, and beyond which the welfare state, as Einaudi often repeated, is turned into a society reduced to "*panem et circenses*". In this perspective, and in a final chapter on

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*compito degli universitari* cit., p. 201. Here Einaudi warned against acritical acceptance of the many "formulas" which, over the course of history, "from Robespierre to Babeuf, from Buonarroti to Saint-Simon, from Fourier to Marx, from Mussolini to Hitler, from Lenin to Stalin", have claimed to impose themselves as absolute truths: "virtue", "the religion of science", "the dominance of blood and race", "dictatorship of the proletariat", and so forth. Thus Einaudi warned his young students, to whom these comments were addressed, not to lose the awareness "of not knowing; our motto is one and one alone: we do not know, but we seek, the truth; we are never sure of possessing it and we will come back to seek it day by day, constantly unsatisfied and always spurred by curiosity".

<sup>80</sup> For a different interpretation of the critical point: S. RICCOSSA, "Sulla teoria del punto critico", in *Luigi Einaudi. Ricordi e testimonianze* (Firenze, Le Monnier, 1983), pp. 67-73.

<sup>81</sup> L. EINAUDI, *Lezioni di politica sociale* (Torino, G. Einaudi, 1949), p. 238. Therefore, Einaudi explains, if we extend "the program" of state intervention "beyond its own sphere, which is the public sphere, to include the sphere that is proper of the individual, the family, the social group, the close-knit community, the voluntary association, the charitable educational foundation, all of which are certainly coordinated and interdependent institutions but endowed with their own *independent* life, their own *will*, then we will have overstepped the critical point. In this case we would be faced not with a society of living men, but an aggregate of automata maneuvered by a center, by a higher authority" (*ibid.*).

*The task of the market and how it can be oriented*, Einaudi endeavored to reformulate once again his gradualist reformism.

We can and therefore we must ensure that the market makes use of its good ability to govern the production and distribution of wealth within certain *limits*, which we consider to be right and just and conforming to our ideals of a society where all men have the possibility of developing their abilities in the best possible manner, and where, even if absolute equality cannot be reached – for this would be compatible only with the kind of life in anthills and beehives, known in the world of men as tyranny, dictatorship, totalitarian regimes – there exist no excessive inequalities of wealth and income. Therefore we must establish good laws for ourselves, good institutions, create a good educational system open to and suited to the various human capabilities, and create good habits and customs. We must therefore try to be men with a developed sense of awareness, desirous of becoming enlightened and/or of acquiring knowledge and education, and we must reach upwards, in a noble competition. The market, which is already a wondrous mechanism, capable of giving the best results within the *limits* of existing institutions, customs and laws, will be able to give even more wonderful results if we succeed in perfecting and reforming the institutions, customs and laws of the framework within which the market lives, in order to reach up to the highest ideals of life. We will succeed in doing so, if we truly desire to.<sup>82</sup>

The most comprehensive essay in which Einaudi focuses on the “critical point” as the hallmark of a genuine liberal society is *In lode del profitto* [*In Praise of Profit*], written in 1956.<sup>83</sup> This essay deserves to be extensively cited because it offers a highly accomplished compendium of Einaudi’s liberalism (or the liberalism of good government) as a “vision of the world” and “of life” which is “varied and plenteous”, open to “*the uncertain unknown where one can glimpse and achieve a new and higher future*”.<sup>84</sup> A socially stable society, Einaudi wrote, “must seek to provide safeguards so that life offers security for the overwhelming majority of men, who do not love and are incapable of tolerating uncertainty, who do not wish to run risks and would be at a loss as to how to cope with them”. Hence the importance of “public services” and “social insurances”. This notwithstanding, he warned, all these proposals can be implemented “at one condition: namely, that the critical point is not

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<sup>82</sup> *Ibid.*, p. 36. For a very good account on Einaudi’s great equilibrium in keeping together freedom, market and social justice, see P.L. PORTA, “Libertà, mercato, giustizia sociale”, in *Luigi Einaudi: libertà economica e coesione sociale*, A. GIGLIOBIANCO (ed.) (Roma-Bari, Laterza, 2010).

<sup>83</sup> The following citations are taken from L. EINAUDI, *In lode del profitto* cit., pp. 171-193.

<sup>84</sup> *Id.*, *Memorandum* cit., p. 44.

reached". But this critical point cannot be determined a priori, since the "optimal proportion" between security and struggle (and the "risk" the latter brings with it), between tradition and criticism, conservation and innovation, "can be determined only by experience which is constantly renewed". In order to avoid exceeding the critical point, "the men of the minority are necessary because the economic, social, moral and intellectual mechanism of a vibrant and progressive society is necessarily subject to risks; because *life* itself is *change*, it is continuous variation, it is a succession of crises, of high and low points, continuous transitions". It is important to recall that for Einaudi, in economic activity, in private property and in the enterprise spirit, it was the very essence of freedom that was at stake. In contrast to Croce's point of view, Einaudi believed that economic activity could not be reduced to the category of "*Utile*". This was, fundamentally, the conviction that led Einaudian liberalism to set limits on state interference for reasons that were first and foremost 'moral', rather than simply involving considerations of the efficiency of the system. It therefore need come as no surprise that in this context "profit" becomes a condition and a symbol of a freedom evoking "man's gaze [...] directed towards the *new*, and *upwards*". A "society without risks" is a society condemned to death or inevitably on its way towards a "totalitarian" system. It is precisely for this reason that

the risk-related profits of entrepreneurs must continue to exist if the economic system is to be elastic, capable of withstanding the jolts of the never-ending variations of technical change and of industrial inventions; if, in other words, we wish human society to undergo *transformations* and *grow*. Profit is the price that has to be paid in order to allow thought to advance freely towards the conquest of truth, and in order for innovators to have a chance to test their discoveries, for enterprising men to *constantly break down the frontier of the known, of the already experienced, and move towards the unknown that is still open to the material and moral advancement of man.*

##### 5. ALLUSIVE (IN)CONCLUSION: THE FIGURE OF THE GOOD GOVERNMENT

Throughout his long years of reflection on the challenges of his era and the fertile exchange of ideas with some of the illustrious scholars of the time, Einaudi had reached the conclusion that the liberal doctrine of struggle, which presupposes an ideal model of man and society and was thus to be regarded as a non-neutral doctrine, should on the one hand not be imposed, but, at best, preached,<sup>85</sup> and on the other, it should be subjected to limits,

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<sup>85</sup> In this regard, a position very similar to that of Einaudi is the point of view adopted by

so that it could be widely recognized and accepted. If throughout his life Einaudi remained faithful to his conviction of the fertility of struggle, as time went by he nevertheless revised the two foci of good government in terms of “*ceaseless endeavouring and experimenting*”,<sup>86</sup> operating both in “debate” and “action”. These were the themes addressed in some of Einaudi’s last *Prediche inutili* [*Useless Preachings*] (1955-1959), where struggle takes on the role of no less than a method of freedom. “The method ‘of freedom’ – Einaudi specified – is founded on the principle of trial and error”. Those who apply this method

*recognize from the very start that they may fall into error and desire that others may attempt to demonstrate the error and discover the proper way to truth [...] Freedom exists as long as there exists the possibility of debate, and criticism. Trial and error, the possibility of making an attempt and going wrong; the freedom of criticism and opposition; these are the characteristics of free regimes.*<sup>87</sup>

In sum,

the great merit of free governments as compared to tyrannical regimes is precisely the fact that in a regime where freedom reigns, *debate* and *action* proceed through the method of *trial and error*. This is the emblem of the superiority of the methods of freedom over those prevailing under tyranny. A tyrant is never racked by doubt: a tyrant marches straight ahead on the chosen path; but the path leads the country to disaster.<sup>88</sup>

Thus the liberal society whose advent Einaudi sought to promote “is founded”, in the last analysis – in other words, stands or collapses – on a two-fold “recognition” which must be conceded “from the very start”: recognition of one’s fallibility and recognition of the desires and beliefs “of others”. This

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J.M. BUCHANAN, *Why I, Too, Am Not a Conservative: The Normative Vision of Classical Liberalism* (Cheltenham, Edward Elgar, 2005), in particular *The Soul of Classical Liberalism*, pp. 52-61.

<sup>86</sup> L. EINAUDI, *Discorso elementare sulle somiglianze e le dissomiglianze tra liberalismo e socialismo* cit., p. 241: “only through struggle, only through never-ending endeavors and experiments, only through successes and failures can a society or a nation thrive. When struggle comes to an end, this signals the death of society”. Building on this argument, Marchionatti rightly defined Einaudi as a “theorist of the open society” (R. MARCHIONATTI, “Luigi Einaudi, economista e liberale”, in *Maestri dell’Ateneo torinese dal Settecento al Novecento*, R. ALLIÒ (ed.) (Torino, Centro Studi di Storia dell’Università di Torino, 2004), pp. 61-84: 84).

<sup>87</sup> L. EINAUDI, “Scuola e libertà” (1956), in *Prediche inutili* cit., pp. 57-58 (my italics).

<sup>88</sup> Id., “Che cosa rimarrebbe allo stato?” (1959), in *Prediche inutili* cit., pp. 345-346. I underlined the identity between Einaudi and Popper – probably mediated by the thought of J.S. Mill and by Einaudi’s reading of J. TALMON, “The Origins of Totalitarian Democracy” (London, Secker & Warburg, 1952) – in *Il liberalismo di Luigi Einaudi o del buongoverno* cit., pp. 62-63.



in turn implies willingness to listen, and above all, willingness to change.<sup>89</sup> However, in Einaudi's eyes these limits were not restricted to the list of constraints deriving from human deficiencies or fallibility: rather, as we saw above, they were also associated with the limits of the institutional framework that 'institutes' and 'guides' human action.<sup>90</sup> The "ideal city" of Einaudi's aspirations, mid-way between heaven and earth, possibility and reality, is therefore a model which, while not claiming to be perfect,<sup>91</sup> is perfectible, that is to say, it proceeds by trial and error along the road to betterment and improvement, and remains open to the emergence of the "new" and the "unknown".

Gazing up at the fresco by Ambrogio Lorenzetti on the *Effects of Good and Bad Government in the countryside and the city*, and inserting a few of its details into the collection entitled *Good government* (1954), Einaudi probably construed it as the ideal model of society that had so long formed the object of his quest and his teachings. Pointing to the *images of good government*, the then President of the Republic, at a distance of six centuries, seems to repeat the same gesture as the rulers of Siena, who were determined to make it *visible*, on the walls of the Palazzo pubblico [Civic Building, open to the public], as an unequivocal founding reference of their (good) government. By doing so, Einaudi indicated a *medium* in which and through which the ruled and the rulers, public and private, could identify themselves. These are the images on which he would have aspired to *found* his "liberal society". This was one of the final stages of a journey studded with waystages and countless fresh starts: from the *divine city* to the *Periclean polis*, from the medieval cities "of the thirteenth and fourteenth centuries" to the "Italian Risorgimento of Mazzini and Cavour".<sup>92</sup> Perhaps this spasmodic motion, proceeding by fits and starts, is symptomatic of an unsatisfied quest, an endeavor repeatedly taken up again and never brought to a conclusion, along the road that looked to good government as the ideal model of society.

In effect, Einaudi had *referred* to good government more in an *allusive* manner than in theoretical-conceptual terms, although (as we will see shortly)

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<sup>89</sup> I would argue that the same interpretation can be given to the assertion that sees in Einaudi's liberalism as a veritable *forma mentis*: E. DI NUOSCIO, "Le libéralisme de Luigi Einaudi", in *L'histoire du libéralisme en Europe*, P. NEMO – J. PETITOT (eds.) (Paris, Presses Universitaires de France, 2006), pp. 651-672.

<sup>90</sup> For a reflection on the institutional question cf. also R. CUBEDDU, *Le istituzioni e la libertà* (Macerata, Liberilibri, 2006), pp. 139-193.

<sup>91</sup> For an anti-perfectionist economic philosophy cf. also S. RICOSSA, *La fine dell'economia. Saggio sulla perfezione* (1986), preface by E. Colombatto (Soveria Mannelli - Treviglio, Rubbettino - Facco, 2006).

<sup>92</sup> L. EINAUDI, *Economia di concorrenza e capitalismo storico* cit., p. 72.

this does not mean it cannot be granted the epistemological status of a theory. If good government was never theorized nor, much less, systematized in a harmonious and accomplished treatise, this is a mark of Einaudi's authentically liberal spirit. The contemporary relevance of the Piedmontese liberal resides in the very circumstance that his *thought* cannot be reduced to his writings; it does not constitute a logical-categorical, *closed* and *perfect* system. His *attitude* of openness to comparison and exchange of ideas, to criticism and change, to "experience" and the "new", precluded that he could ever endorse such closure. Paraphrasing a celebrated passage from Musil, one could say that Einaudi's marked "sense of reality" was combined with a no less radical "sense of possibility".<sup>93</sup>

I would like to clarify this point by dwelling on the philosophical-legal perspective put forward by Enrico di Robilant concerning the epistemological meaning of "making theory". By introducing the notion of *figure*, and making reference to the *aesthetic-perceptual component of theories*, de Robilant underlines that theory "*alludes* to something which goes beyond its information content". In this perspective,

the aesthetic force of theories should not be conceived as something alien to their explanatory structure, for it is inextricably bound up with their structure; therefore it can, implicitly, increase their capacity of representation, their reduction to unity and explanation, inasmuch as it displays them in their structure and their internal dynamics. Yet although the aesthetic force of theories stems from this structure and this dynamic trend, its significance goes beyond the theories themselves, in that it alludes to a meaning which cannot be reduced to their description or to information concerning them. For *analogously to the 'meaning' of a work of art, it can never be fully and exhaustively put into words, but only conveyed by means of allusive indications.*

In this sense theories contain

less of the reality that they propose to explain because they constitute a figure based on a selection with a theoretical bias; yet on the other hand they contain more than the reality that is explained, in that they are the bearers of an allusive meaning springing from their form and transcending the represented and explained reality.<sup>94</sup>

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<sup>93</sup> R. MUSIL, *L'uomo senza qualità*, A. FRISÉ (ed.), ital. transl. (Torino, G. Einaudi, 1996), p. 13. While the 'concreteness' of Einaudian thought has often been noted (among others, J.A. SCHUMPFER, *History of Economic Analysis* (NY, Oxford University Press, 1954), pp. 820, 855), it seems to me that insufficient emphasis has been placed on this 'ideal tension'.

<sup>94</sup> E. DI ROBLANT, "La configurazione delle teorie nella scienza giuridica", *Rivista internazionale di filosofia del diritto*, IV (1976), pp. 470-539: 536.

This epistemological perspective, applied to the 'juridical' context, implies that the law is "a set of theoretical figures that are present in this theoretical form and which have to be translated into actual reality"; the law is a "virtual reality" endowed with the inherent pretence of transforming itself into *actual reality*".<sup>95</sup> Now, it is precisely this gap between the virtual and the actual that gives rise to normativity.<sup>96</sup>

By the same token, in order for *ideal* good government to become 'real' (while still holding the gap between these two registers open) – in order, say, for it to be genuinely capable of setting a limit on the "omnipotence of the state" but also on "private abuse and oppression",<sup>97</sup> it must constitute a widely shared axiological horizon. But this horizon, which is itself also the figure of a limit, must in turn always remain open to the possibility of change, even to the possibility of going beyond its own limit.

Similarly, and in a still more significant manner, the ideal good government preached by Einaudi in the public sphere spans the overlapping between economic theory (as a 'science of good government') and narration, between rationality and identity. It is a constellation of metaphors, symbols, emblematic figures, ranging from the *myth* of the *self-made man* to the symbolic figure of the *pater familias*, from the "rule of law" to the "rule of truth", from the ideal of the *mixed* government to the good *elite* that would be expected to arise from the "models of private life". Not to mention Einaudi the narrator, Einaudi who narrated the 'deeds of the heroes', pointing to them as models: the "wise", the "patriarchs", the "innovators", and the "crazy" "builders of their own land", the "speculators", the "inventors", the "busy bees", the "savers", whom he contrasted with the "egoists", the "envious", the "slothful", the "wastrels", the "squanderers", the "lazy drones".<sup>98</sup> In sum, good government itself, through a process of continuous translation-rewriting – from the good government the Pythia had promised Lycurgus to

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<sup>95</sup> ID., *Diritto, società e persona. Appunti per il corso di filosofia del diritto 1998-99* (Torino, Giappichelli, 1999), p. 32.

<sup>96</sup> For further thoughts on this perspective, seen in terms of the relation between aesthetics and normativity, cf. P. HERITER, *Società post-büsteriane?* cit., especially pp. 167 and ff.

<sup>97</sup> In the solemn message read to the two houses of Parliament on 12<sup>th</sup> May 1948 after his election to the office of President of the Republic, and addressed to young republican Italy, Einaudi spelled out his reformist credo: "to retain of the present social structure all that which – and only that which – is a guarantee of freedom of the human person against the omnipotence of the state and against overweening private power, and to guarantee to all citizens, whatever the circumstances of their birth may have been, the greatest possible equality of starting points".

<sup>98</sup> Precisely for this reason I believe it is mistaken, and misleading, to summarize the complexity of Einaudi's figure under the illuminist label of "demythologizer" (R. ROMANO, "Introduzione", in L. EINAUDI, *Scritti economici storici e civili*, R. ROMANO (ed.) (Milano, Mondadori, 1973), p. xli).

Lorenzetti's fresco cycle, from the treatises on *oikonomia* up to the 'good governance' of the present-day – is a great *mythic symbol* that is eternally reactualized.

However, there is a need for awareness that every translation-rewriting may always involve the risk of reducing good government to a legitimizing slogan. Such a risk is inherent in that particular construal of *good governance* where the insistence on governmental procedures (and on an instrumental notion of rationality) seems to imply that the procedures are *per se* a guarantee of that *good*, thereby exploiting the alleged value of efficient procedures to mask the power politics going on behind the scenes.

In some respects, Einaudi's good government cautions us on this account as well. And this is not only because, as he warned, "every generation must address the everlasting problem of how to preserve the "freedom of man": it is also because the good government portrayed by Einaudi does not lend itself to being reduced to efficiency or to the procedures involved in government affairs, for the simple reason that the scientific, economic, political or legal level of his line of reasoning is always overlaid with a mythic, symbolic, metaphorical and narrative plane.

This is also why, in my view, Lorenzetti's pictorial cycle (and Luigi Einaudi's reference to it) can be seen as far more *anthropologically 'complex'*, open and rich than the modern theories of governance and/or good governance. It is because it depicts the problem of good government and bad government with the different registers and "languages" of the human: theological, political, juridical, economic, historical, architectural/city planning-related, symbolic, allegorical, narrative, musical. As such, Lorenzetti's fresco is an emblematic testimony to the complexity of the human. Thus the significance of this fresco may be rethought by contemplating its anthropological implications: on account of the *possibility* it embodies of developing into a *structure that connects*, so that what becomes possible, always and only possible, is a meeting among men. Moreover, and finally, this fresco does not claim to supply a definitive answer to the problem of good government: rather, it continuously repropose the mystery of its foundation. Like an inexhaustible resource of meaningfulness it is everlastingly open to enquiry by man, by man who is forever poised between good and bad government.

In conclusion, good government is philosophically interesting precisely inasmuch as it is a synthesizing-allusive theory-figure. Furthermore, as a figure, model or image, good government institutes and inscribes a *normativity* in whoever enters into a *relation* with it. Indeed, I would say that good government is the most all-embracing figure of the law-freedom interplay. Good

government is a *meta-norm* which, poised between 'internal' and 'external', internalization and representation, *ethos* and law, remains open to change if and in the extent to which man succeeds in maintaining open the gap between heaven and earth, between possibility and reality ("freedom exists as long as there exists the possibility of debate, criticism [...], the possibility of trying and going wrong").

But, if one wishes to remain faithful to the 'spirit' of Einaudi rather than the letter of his 'law', the conclusion cannot but be inconclusive. What I might venture to add, with a 'final' variation, or rather with an Epilogue that alludes to the Fugue, is that if the "critical point" represents a figure which is a synthesis of the law-freedom nexus, then good government is a figure made at *image of* that Foundation – construable as Authority, Law or Truth – which can never be fully possessed, instituted, constituted, positivized. Only by virtue of this consciousness is it the source of a superabundance of meaning which is, as such, a guarantee of freedom.

